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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

BEVERLY MEYER, Individually and  
on Behalf of All Others Similarly  
Situatd.,

Plaintiff,

vs.

COLAVITA USA INC., and  
COLAVITA USA, L.L.C.,

Defendants.

JOSEPH NACHIO, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

AMERICAN RICE INC., POMPEIAN  
INC., and SALOV NORTH AMERICA  
CORPORATION,

Defendants.

Case No. SACV11-696 AG-(MLG)

*(Pending in the United States District  
Court for the Southern District of  
Florida, Civil Actions 10-61781-JAL  
and 10-61793-JAL)*

MOTION TO COMPEL

DATE: TBD JUNE 7, 2011  
TIME: TBD 10:00AM  
CTRM: TBD 6AM

# TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. ARGUMENT .....	3
A. The Subpoenas to Sachs Are Proper.....	3
1. The Documents Are Relevant .....	3
2. The Subpoenas Comply with Rule 45 .....	4
B. Sachs Violated Rule 45.....	4
1. Sachs Should Have Filed Privilege Logs .....	4
III. SACHS WAIVED ANY PRIVILEGE .....	6
A. Legal Standard for Work Product Analysis.....	6
1. Waiver of Work Product Protection.....	6
IV. CONCLUSION .....	8

# TABLE OF AUTHORITIES

Page

## CASES

<i>Bd. of Trs. of the Leland Stanford Junior Univ. v. Roche Molecular Sys.,</i> 237 F.R.D. 618 (N.D. Cal. 2006) .....	6, 7
<i>Behrend v. Comcast Corp.,</i> 248 F.R.D. 84 (D. Mass. 2008) .....	4
<i>Bozzuto v. Cox,</i> 255 F.R.D. 673 (C.D. Cal. 2009) .....	6
<i>Eureka Fin. Corp. v. Hartford Accident &amp; Indem. Co.,</i> 136 F.R.D. 179 (E.D. Cal. 1991).....	5
<i>Great Am. Assurance Co. v. Liberty Surplus Ins. Corp.,</i> 669 F. Supp. 2d 1084 (N.D. Cal. 2009) .....	7
<i>HLC Props., Ltd. v. Superior Court,</i> 35 Cal. 4th 54, 24 Cal. Rptr. 3d 199 105 P.3d 560 (2005) .....	6, 7
<i>Martin v. Carapelli USA, LLC, et al.,</i> No. 30-2010-00395464-CU-FR-CXC (Cal. Super. Ct., Orange Cnty.) .....	1
<i>Mass. Sch. of Law v. Am. Bar Ass'n,</i> 914 F. Supp. 1172 (E.D. Pa. 1996) .....	5
<i>Transamerica Computer Co. v. Int'l Bus. Mach. Corp.,</i> 573 F.2d 646 (9th Cir.1978).....	7
<i>Ventre v. Datronic Rental Corp.,</i> No. 92 C 3289, 1995 WL 42345 (N.D. Ill. Feb. 2, 1995).....	5

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**Page**

**STATUTES, RULES AND REGULATIONS**

California Evidence Code

§911 .....	7
§912 .....	7
§912(a).....	7

Florida Deceptive Trade Practices Act

Fla. Stat. §501.201 .....	1
---------------------------	---

Federal Rules of Civil Procedure

Rule 26.....	1
Rule 26(b)(1) .....	3, 4
Rule 26(b)(3) .....	6
Rule 45.....	1, 4, 5
Rule 45(d).....	4, 5

Federal Rules of Evidence

Rule 501.....	7
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Pursuant to Federal Rules of Civil Procedure 26 and 45, Beverly Meyer and Joseph Nachio (collectively, "Plaintiffs") respectfully move this Court for an Order compelling the production of documents sought by properly-issued subpoenas from third party Michael J. Sachs ("Sachs").

## **I. INTRODUCTION**

Plaintiffs have filed putative class actions filed in the Southern District of Florida<sup>1</sup> against Colavita USA Inc., Colavita USA, L.L.C., American Rice Inc., Pompeian Inc. and Salov North America Corporation (collectively, "Defendants") for deceptive advertisement of its extra virgin olive oil products (hereinafter referred to as "products at issue"), alleging causes of action under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") and breach of express warranty.<sup>2</sup>

Sachs is not a party to these actions, but instead is an attorney with the firm of Callahan & Blaine, a California based law firm. Sachs represented California based plaintiffs in a similar litigation against Defendants, as well as other olive oil manufacturers and retailers ("California Oil Litigation").<sup>3</sup> On December 9, 2010, Sachs dismissed the California Oil Litigation.<sup>4</sup> On December 10, 2010, Sachs also filed the Declaration of Michael J. Sachs Requesting Dismissal of Class Action ("Sachs Declaration") with the California court.<sup>5</sup> In the Sachs Declaration, Sachs claimed that Callahan & Blaine conducted exhaustive testing and analysis, but that the

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<sup>1</sup> These cases are styled as *Meyer v. Colavita USA Inc., et al.*, No. 10-61781 (S.D. Fla.), and *Nachio v. American Rice Inc., et al.*, No. 10-61793 (S.D. Fla.), and were consolidated for purposes of discovery.

<sup>2</sup> The *Meyer* and *Nachio* complaints are attached hereto as Ex. A.

<sup>3</sup> The California Oil Litigation is styled as *Martin v. Carrabelle USA, LLC, et al.*, No. 30-2010-00395464-CU-FR-COX (Cal. Super. Ct., Orange City.) and the complaint is attached hereto as Ex. B.

<sup>4</sup> See Request for Dismissal, attached hereto as Ex. C.

<sup>5</sup> The Sachs Declaration is attached hereto as Ex. D.

1 results were inconclusive or required further analysis. This was further conceded by  
 2 another lawyer at Callahan & Blaine, Daniel J. Callahan Esq. ("Callahan"), when he  
 3 told a reporter for the College Times on April 14, 2011, that his firm ran into  
 4 difficulties when they sent samples of olive oil for testing.<sup>6</sup> Sachs is, therefore, in  
 5 possession of testing documents that will lead to the discovery of admissible evidence  
 6 or that otherwise bear directly on the issues in this case. For that reason, Plaintiffs  
 7 attempted to contact Sachs on many occasions to informally obtain the materials, but  
 8 were not successful.

9 On March 22, 2011, counsel for Plaintiffs each issued a subpoena *duces tecum*  
 10 (the "Subpoenas") to Sachs.<sup>7</sup> The Subpoenas to Sachs were narrowly-tailored and  
 11 only requested the production of: (1) documents relating to the testing of the oils, and  
 12 the results thereof; (2) documents relating to the analysis of the oils, and the results  
 13 thereof; (3) documents which he relied upon in making the Sachs Declaration that he  
 14 performed exhaustive testing; and (4) documents upon which Sachs represented in the  
 15 Sachs Declaration that the results of the testing were inconclusive and further testing  
 16 was necessary.

17 In response to the Subpoenas, Sachs served boilerplate objections, including the  
 18 attorney work product privilege doctrine and/or the attorney-client privilege doctrine  
 19 as a total shield to producing any of the requested documents.<sup>8</sup> No documents have  
 20 been produced by Sachs. Moreover, based on the boilerplate objections, without a  
 21

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22 <sup>6</sup> See [http://www.collegegetimes.com/student-life/doubts-over-olive-oil-are-raised-](http://www.collegegetimes.com/student-life/doubts-over-olive-oil-are-raised-again-1.2542967)  
 23 [anew-1.2542967](http://www.collegegetimes.com/student-life/doubts-over-olive-oil-are-raised-again-1.2542967), attached hereto as Ex. E.

24 <sup>7</sup> The Subpoenas are attached hereto as Ex. F.

25 <sup>8</sup> Sachs asserted non-privilege objections of "overbroad [and] burdensome" based  
 26 on the definition section of Plaintiffs' Subpoenas. See Objections to Subpoena to  
 27 Produce Documents of Michael J. Sachs, attached hereto as Ex. G. However, during a  
 28 meet and confer with Sachs on April 25, 2011, counsel for Plaintiffs made the limited  
 nature of the documents crystal clear. Nevertheless, despite this clarification Sachs  
 still will not produce any documents.

1 privilege log or anyway to determine if either the attorney-client privilege or the work  
 2 product privilege apply, this motion was unavoidable.<sup>9</sup> Undersigned counsel  
 3 conferred with Defendants in both the *Meyer* and *Nachio* matters and they do not  
 4 oppose the relief sought in this Motion to Compel.

5 Because Sachs was properly issued subpoenas to produce documents that are  
 6 reasonably calculated to lead to the discovery of admissible evidence, and because  
 7 Sachs made it heretofore impossible to receive those documents, Plaintiffs  
 8 respectfully move this Court to for an Order compelling Sachs to produce all of the  
 9 subpoenaed documents.

## 10 **II. ARGUMENT**

### 11 **A. The Subpoenas to Sachs Are Proper**

#### 12 **1. The Documents Are Relevant**

13 Rule 26(b)(1) provides: "Parties may obtain discovery regarding any  
 14 nonprivileged matter that is relevant to any party's claim or defense . . . ." Fed. R.  
 15 Civ. P. 26(b)(1). Importantly, Sachs does not object to any of the requests contained  
 16 within the subpoena based on relevance.

17 The Subpoenas are narrowly-tailored and request documents relating to: (1) the  
 18 testing of the oils, and the results thereof; (2) the analysis of the oils, and the results  
 19 thereof; (3) any documents upon which Sachs relied upon in making the Sachs  
 20 Declaration that he performed exhaustive testing; and (4) any documents upon which  
 21 Sachs represented in the Sachs Declaration that the results of the testing were  
 22 inconclusive and further testing was necessary. With just four requests, the  
 23

---

24  
 25 <sup>9</sup> While the failure to provide anything except for boilerplate privilege objections  
 26 makes it difficult to ascertain what documents are protected by either privilege raised,  
 27 Plaintiffs are not seeking documents which are protected by the attorney-client  
 28 privilege. In fact, during the meet and confer of April 25, 2011, Sachs admitted his  
 firm paid for the testing and analysis by a third party (or parties). On the other hand,  
 any work product objections have been waived, as explained herein.

1 Subpoenas seek relevant information concerning testing and results for Defendants'  
2 extra virgin olive oil products at issue in Plaintiffs' actions. *Id.*

3 Because Sachs stated under oath that he dismissed the California Oil Litigation  
4 based on these tests and results, and because the Subpoenas seek documents directly  
5 relating to the tests and results which caused Sachs to dismiss the case, the Subpoenas  
6 are clearly discoverable under Rule 26(b)(1).

## 7 **2. The Subpoenas Comply with Rule 45**

8 Because Sachs is a non-party, Fed. R. Civ. P. 45 is the proper vehicle for  
9 Plaintiffs to seek the discoverable materials. *See, e.g., Behrend v. Comcast Corp.*, 248  
10 F.R.D. 84, 87 (D. Mass. 2008) (non-party required to produce documents in response  
11 to subpoena *duces tecum* under Rule 45). Plaintiffs properly served a subpoena *duces*  
12 *tecum* on Sachs in compliance with Rule 45, in the Central District of California,  
13 where Sachs is located. Sachs does not raise objections to the use of the Rule 45  
14 Subpoenas as an improper method to obtain the requested documents.

## 15 **B. Sachs Violated Rule 45**

### 16 **1. Sachs Should Have Filed Privilege Logs**

17 Rule 45(d) sets forth a specific procedure for objecting to properly issued  
18 subpoena:

19 (2) Claiming Privilege or Protection.

20 (A) Information Withheld. A person withholding subpoenaed  
21 information under a claim that it is privileged or subject to protection as  
22 trial-preparation material must:

23 (i) expressly make the claim; and

24 (ii) describe the nature of the withheld documents, communications, or  
25 tangible things in a manner that, without revealing information itself  
26 privileged or protected, will enable the parties to assess the claim.

27 Fed. R. Civ. P. 45(d).

28

1 In the 1991 Amendment to Rule 45(d), the Rules Committee made clear that the  
2 procedure is meant to prevent litigants from unilaterally deciding “the limits of that  
3 party’s own entitlement.” Fed. R. Civ. P. 45(d) advisory committee’s note (1991).  
4 The Rules Committee went on to state: “A person claiming a privilege or protection  
5 who fails to provide adequate information about the privilege or protection claim to  
6 the party seeking the information is subject to an order to show cause why the person  
7 should not be held in contempt . . . .” *Id.*; see also *Ventre v. Datronic Rental Corp.*,  
8 No. 92 C 3289, 1995 WL 42345, at \*1-\*4 (N.D. Ill. Feb. 2, 1995) (citing Rules  
9 Committee).

10 Sachs has not provided Plaintiffs or the Court with any privilege logs pursuant  
11 to Rule 45(d). Nor is there any adequate information or justification for why Sachs  
12 unilaterally decided to not produce any documents. This plainly violates Rule 45. As  
13 the court in *Mass. Sch. of Law v. Am. Bar Ass’n*, 914 F. Supp. 1172 (E.D. Pa. 1996),  
14 stated:

15 A general objection is insufficient. The purpose of the rule is to provide  
16 a party whose discovery is constrained by a claim of privilege with  
17 information sufficient to evaluate the claim and to resist it. The party  
18 claiming the privilege cannot decide the limits of his entitlement. A  
19 person who fails to provide adequate information about the privilege to  
20 the party seeking the information may be held in contempt or be  
21 subjected to sanctions. . . . Moreover, failure to assert a privilege  
22 properly may amount to a waiver of that privilege. . . . It follows that a  
23 party who alleges privilege as a reason for not complying with a  
24 subpoena has the burden of proof to assert specific facts relating to  
25 specific documents and cannot rely on conclusory statements.

26 *Id.* at 1178; cf. *Eureka Fin. Corp. v. Hartford Accident & Indem. Co.*, 136 F.R.D.  
27 179, 183-84 (E.D. Cal. 1991).

### 1 III. SACHS WAIVED ANY PRIVILEGE

2 With nothing but boilerplate objections, Plaintiffs are unable to ascertain the  
3 nature of the documents which may be subject to protection based on any privilege.  
4 However, Plaintiffs are not seeking documents protected by the attorney-client  
5 privilege. As to Sachs' claim for work product protection, that privilege has been  
6 waived.

7 Sachs waived any work product privilege that could be claimed when Callahan  
8 stated in open court that testing was completed in Germany and was continuing in the  
9 United States,<sup>10</sup> when Sachs filed the Sachs Declaration, and when Callahan told the  
10 College Times that the results of the tests his firm had done, and that they did not  
11 support their claims in the California Oil Litigation. Put simply, the lawyers at  
12 Callahan & Blaine, disclosed, in a general sense, the very conclusions of the testing  
13 and analysis at issue. As a result, the attorney-client privilege and the work product  
14 privilege does not exist or was waived.

#### 15 A. Legal Standard for Work Product Analysis

16 The party claiming a privilege shoulders the burden of showing that the  
17 evidence it seeks to suppress falls within the terms of an applicable statute.  
18 *HLC Props., Ltd. v. Superior Court*, 35 Cal. 4th 54, 59, 24 Cal. Rptr. 3d 199, 105 P.3d  
19 560 (2005). Unlike issues of attorney-client privilege, issues concerning the work  
20 product doctrine are procedural and thus governed by Fed. R. Civ. P. 26(b)(3).  
21 *Bozzuto v. Cox*, 255 F.R.D. 673, 677 (C.D. Cal. 2009).

#### 22 1. Waiver of Work Product Protection

23 "[I]n cases where the voluntary disclosure of attorney work product to [a] . . .  
24 third party substantially increases the possibility of an opposing party obtaining the  
25 information, this would 'defeat the policy underlying the privilege.'" *Bd. of Trs. of*

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26  
27 <sup>10</sup> See November 3, 2010, Case Management Conference Minute Order, attached  
28 hereto as Ex. H.



1 *the Leland Stanford Junior Univ. v. Roche Molecular Sys.*, 237 F.R.D. 618, 623 n.3  
 2 (N.D. Cal. 2006) (citation omitted). In such a case, work product waiver may be  
 3 analyzed using the same analysis as for attorney-client privilege waiver. *Id.*; *see also*  
 4 *Transamerica Computer Co. v. Int'l Bus. Mach. Corp.*, 573 F.2d 646, 648 n.1 (9th Cir.  
 5 1978) (using the same analysis for attorney-client privilege and work product waiver  
 6 when a document was handed over to a litigation adversary).

7 In utilizing that attorney-client privilege waiver analysis to determine if the  
 8 work product privilege has been waived, Cal. Evid. Code §912(a) states the applicable  
 9 rule with respect to waiver of privileges: “[privilege] is waived with respect to a  
 10 communication protected by the privilege if any holder of the privilege, without  
 11 coercion, has disclosed a significant part of the communication or has consented to  
 12 disclosure made by anyone.” Consent to disclosure is manifested by any statement or  
 13 other conduct of the holder.<sup>11</sup> Cal. Evid. Code §912.

14 Sachs has not met his burden and has waived the work product privilege. *See*  
 15 *HLC*, 35 Cal. 4th at 59. Waiver occurred as follows:

16 First, On November 3, 2010, Callahan announced during a Case  
 17 Management Conference, that testing in Germany had been completed  
 18 and testing in the United States was ongoing. This disclosure waived  
 19 any work product or attorney-client privilege.

20 The privilege was again waived on December 8, 2010 when Sachs disclosed in  
 21 the Sachs Declaration that “Callahan & Blaine has had conducted exhaustive testing  
 22 and analysis of the olive oil products of the Defendants in the instant action to confirm  
 23 that they support the allegations made in the Complaint. Unfortunately, the results of

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24  
 25 <sup>11</sup> Fed. R. Evid. 501, dictates that attorney-client issues in diversity cases are  
 26 substantive and thus controlled by the forum state’s law. *Great Am. Assurance Co. v.*  
 27 *Liberty Surplus Ins. Corp.*, 669 F. Supp. 2d 1084, 1090 (N.D. Cal. 2009). The  
 28 California Evidence Code declares that the attorney-client privilege is governed by  
 statute. Cal. Evid. Code §911.

1 the testing have been inconclusive and additional testing and analysis is necessary in  
2 order to determine whether this action should be maintained against the currently  
3 named Defendants.” *See* Sachs Declaration, ¶2.

4 In addition to the previous two instances of waiver, on April 14, 2011, Sachs  
5 again waived any potential privilege when Callahan disclosed to the College Times  
6 that, “his firm ran into difficulties when it sent olive oil samples to various  
7 laboratories for testing: [t]he results, he said, were inconsistent” and that “[t]here  
8 were good grades in Georgia, but bad in California.” *See* Ex. E.

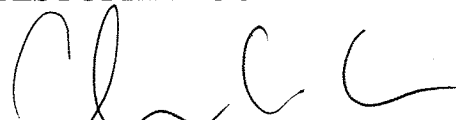
9 Sachs cannot prove that the disclosure of the testing and the results was  
10 anything but voluntary. The statement made at the Case Management Conference, the  
11 Sachs Declaration and the College Times article, are all actions inconsistent with  
12 maintaining privilege. The disclosures were made in a public forum and were  
13 available to anyone who was interested. Thus, as with the attorney-client privilege,  
14 there was a voluntary waiver of the attorney work product protection.

15 **IV. CONCLUSION**

16 Sachs was properly served with a subpoena that included narrowly tailored  
17 requests which were relevant to the instant case. Notwithstanding the fact that Sachs  
18 failed to properly preserve any privilege objections, Sachs waived his objections by  
19 Callahan & Blaine voluntarily disclosing that they tested the relevant products and the  
20 results did not support their claims. As such, this Court should order the production of  
21 the testing results and analysis and should order Sachs to pay all fees and costs  
22 associated with the preparation, filing and argument relating to this Motion.

23 DATED: May 6, 2011

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# EXHIBIT A

Case 0:10-cv-61781-JAL Document 1-2 Entered on FLSD Docket 09/24/2010 Page 3 of 52

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

BEVERLY MEYER, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

COLAVITA USA INC., and COLAVITA  
USA, L.L.C.,

Defendants.

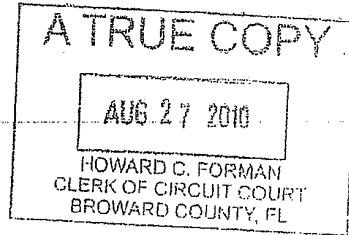
Case No.:

10 35097

CLASS REPRESENTATION

JURY TRIAL DEMANDED

14



CLASS ACTION COMPLAINT

Plaintiff Beverly Meyer ("Plaintiff"), brings this action on behalf of herself and all others similarly situated against defendants Colavita USA Inc., and Colavita USA, L.L.C., ("Colivita" or "Defendants"), and allege:

#### JURISDICTION AND VENUE

1. This action is brought as a class action pursuant to Florida Rule of Civil Procedure 1.220.

2. The damages suffered and sought to be recovered herein total, in the aggregate, in excess of the minimum jurisdictional limits of this Court. Plaintiff's individual claims do not exceed the sum or value of \$75,000.00.

3. Venue is proper in Broward County, Florida because the causes of action asserted herein occurred and/or accrued, among other places, in Broward County, Florida. Venue is also appropriate in this Court because Colavita conducts substantial business in Broward County and has targeted consumers to purchase their product and has advertised in various media in Broward County.

4. This action is not removable pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332 (2005), pursuant to *Cappuccitti v. DirecTV, Inc.*, No. 09-14107, 2010 WL 2803093, at \*5 (11th Cir. July 19, 2010).

#### NATURE OF THE ACTION

5. This is a consumer class action on behalf of purchasers of Defendants' products that are falsely and deceptively labeled as "extra virgin olive oil" ("EVOO"), which is the highest and most expensive grade for olive oil product. Colavita markets and sells for a substantial premium its products as being "extra virgin olive oil" when the product clearly does not meet or warrant this "extra virgin" olive oil product grade or the price premium for which it is sold.

6. The International Olive Counsel ("IOC"), the United States Department of Agriculture ("USDA"), and the state of California, the United States' largest domestic olive oil producer, have delineated specific standards for the "extra virgin olive oil" grade. Although it is well aware of these standards, the Colavita does not meet these standards for its products, including the "organoleptic test" (herein referred to as "sensory test").<sup>1</sup>

7. Indeed, the University of California at Davis ("UC Davis") recently conducted a comprehensive study delineating exactly how the Colavitas' product does not meet these standards (the "Davis Study"). Under the Davis Study, the Colavitas' product, which was advertised, marketed and sold for a premium as "extra virgin olive oil," tested at lower grades of olive oil.

8. Upon information and belief, these same products tested in the Davis Study are sold to consumers throughout the state of Florida. Given the time-sensitive and fragile logistic processes involved in mass producing true extra virgin olive oil, Colavita cannot produce nearly the quantities of extra virgin olive oil it claims to sell into the United States. Indeed, Colavita does not even bother sending Americans true grade "extra virgin olive oil." Colavita uses the precious little true extra virgin olive oil for sale to consumers in countries that have a longer history of consuming extra virgin olive oil and a taste pallet that commands only this high quality product. Colavita does not respect the American olive oil taste pallet as a whole and bank on the fact that Americans cannot discern between rancid or adulterated olive oil and true extra virgin olive oil.

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<sup>1</sup> Since 1948, the USDA regulated olive oil grades and utilized chemical and sensory standards. In light of the volumes of olive oil imported into the United States, on October 25, 2010, the USDA will incorporate many of the IOC regulations.

9. To further its advertizing deception, Colavita manipulates the chemistry of its olive oil and synthetically attempts to reach chemical balances that approximate what real "extra virgin olive oil" might look light underneath a microscope. But Colavita cannot fake all the indicators of what true extra virgin olive oil really is, including the sensory test, which is exactly what the Davis Study revealed.

10. Plaintiff, like hundreds of thousands, if not millions, of other Floridians has been duped by Colavitas' false, deceptive and unfair marketing campaign of its purportedly "extra virgin olive oil." In short, Plaintiff and the class have not received the benefit of their bargains as a result of Colavitas' false, deceptive and unfair marketing campaign, including Colavitas' product labels. Plaintiff and the class have sought to purchase real "extra virgin olive oil" and have instead received rancid or adulterated olive oil. And, indeed, Plaintiff and the class have paid a premium price on the fake "extra virgin olive oil" sold to them by Colavita.

11. In this action, Plaintiff seeks to recover the benefit of the bargain for herself and the class and to enjoin Colavita from continuing with its false, deceptive and unfair marketing campaign of products that do not meet the "extra virgin olive oil" standard as advertised.

#### **PARTIES**

12. At all times relevant to this matter, Plaintiff Beverly Meyer resided and continues to reside in this County. During the class period, Plaintiff was exposed to and saw Colavitas' advertising claims, purchased Colavita Extra Virgin Olive Oil (also referred to herein as "Colavita Brand"), and suffered injury in fact and lost money because of the unfair and deceptive trade practices described herein. Plaintiff did not receive the benefit of her bargain in each purchase of Colavita Brand. Plaintiff further paid a price premium for each purchase of Colavita Brand.

13. Colavita USA Inc., is incorporated in New Jersey and is headquartered in Linden, New Jersey. Colavita is a wholly owned subsidiary of Colavita S.P.A. Colavita promotes markets, distributes and sells Colavita Extra Virgin Olive Oil to thousands of consumers in the State of Florida, including Broward County, Florida. Colavita USA Inc., imports a significant share of the EVOO consumed in the United States. Upon information and belief, the Colavita Brand uses olives that come from France, Greece, Israel, Italy, Morocco, Portugal, Spain, Tunisia, and Turkey.

14. Colavita USA, L.L.C., is a limited liability company and is headquartered in Linden, New Jersey. Colavita is a wholly owned subsidiary of Colavita S.P.A. Colavita promotes markets, distributes and sells Colavita Extra Virgin Olive Oil to thousands of consumers in the State of Florida, including Broward County, Florida. Colavita USA, LLC, imports a significant share of the EVOO consumed in the United States. Upon information and belief, the Colavita Brand uses olives that come from France, Greece, Israel, Italy, Morocco, Portugal, Spain, Tunisia, and Turkey.

#### CLASS REPRESENTATION ALLEGATIONS

15. Plaintiff brings this lawsuit on behalf of herself and the proposed Class members under Rules 1.220(b)(2) and (b)(3) of the Florida Rules of Civil Procedure. The proposed Class consists of:

*All persons who purchased Colavita Brand product labeled as "extra virgin" olive oil in the State of Florida.*

16. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are Colavitas' officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees,

principals, servants, partners, joint venturers, or entities controlled by Colavita, and their successors, assigns, or other persons or entities related to or affiliated with Colavita and/or their officers and/or directors, or any of them; the Judge assigned to this action, and any member of the Judge's immediate family.

17. *Numerosity.* The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff. The true number of Class members is known by Colavita, its distributors and retailers, however, and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

18. *Existence and Predominance of Common Questions of Law and Fact.* Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Colavita had adequate substantiation for their claims prior to making them;
- (b) whether the claims discussed above are true, or are misleading, or reasonably likely to deceive;
- (c) whether Colavitas' alleged conduct violates public policy;
- (d) whether the alleged conduct constitutes violations of the laws asserted herein;
- (e) whether Colavita engaged in false or deceptive advertising;



(f) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;

(g) whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

19. *Typicality.* Plaintiff's claims are typical of the claims of the members of the Class in that Colavita was unjustly enriched as a result of Plaintiff's and the Class' respective purchases of EVOO.

20. *Adequacy of Representation.* Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

21. *Superiority.* A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Colavita. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

22. In the alternative, the Class may also be certified because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for Colavita;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Colavita has acted or refused to act on grounds generally applicable to the Class thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

23. The claims asserted herein are applicable to all customers throughout the State of Florida who purchased EVOO. Adequate notice can be given to Class members directly using information maintained in Colavitas' records, the records of third parties, or through notice by publication.

24. Damages may be calculated, in part, from the sales information maintained in Colavitas' records, or the records of third parties, so that the cost of administering a recovery for the Class can be minimized. However, the precise amount of damages available to Plaintiff and the other members of the Class is not a barrier to class certification.

25. Unless a class is certified, Colavita will retain monies received as a result of its conduct that was taken from Plaintiff and proposed Class members. Unless a class-wide injunction is issued, Colavita will continue to commit the violations alleged, and the members of the Class will continue to be misled.

## SUBSTANTIVE ALLEGATIONS

### *Extra Virgin Olive Oil*

26. American Consumers spend an amazing \$700 million a year on olive oil labeled as “extra virgin” not realizing that many of these products, including those purchased from Colavita, is not worthy of the benefit of the bargain, much less the premium prices attached to the products.

27. At the pinnacle of the olive oil industry sits extra-virgin olive oil — the gold standard. The term “extra virgin” is defined by the International Olive Council (“IOC”), the USDA, and the state of California, the United State’s largest domestic olive oil producer.

28. Since Colavita is required to comply with the IOC, the USDA, and the laws of the state of California, in those respective jurisdictions, Colavita clearly knows what the term “extra virgin” means.

29. Specifically, the IOC defines “extra virgin” olive oil as: Extra virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and the other characteristics of which correspond to those fixed for there category in there standard. The IOC defines a sensory taster as an individual who is specialized in the sensory analysis of a specific product and has a basic understanding of the preparation of the product and market preferences. The IOC utilizes a protocol for its sensory testing which includes, but is not limited to, perception, sensation, and sensitivity.

30. Since 1948, the USDA has regulated olive oil grades and utilized both chemical and sensory standards to determine quality. Currently, quality is rated on a scale of A, which has the charecteristics of what the IOC and others refer to as EVOO, B, and C. In light of the

volumes of olive oil imported into the United States, on October 25, 2010, the USDA will incorporate many of the IOC regulations into an updated set of voluntary standards.

31. The new USDA standards define "U.S. Extra Virgin Olive Oil" as: virgin olive oil which has excellent flavor and odor (median of defects equal to zero and median of fruitiness greater than zero) and a free fatty acid content, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and meets the additional requirements as outlined in §52.1539, as appropriate. Section 52.1539 sets forth the criteria to ascertain the grade of the oil using both chemical and sensory standards.

32. The state of California defines "extra virgin" olive oil as:

Extra virgin olive oil means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams oil, has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil and would meet the sensory standards of extra virgin olive oil as determined by a taste panel certified by the International Olive Council, or, if the International Olive Council ceases to certify taste panels, would meet the sensory standards of a taste panel that is operated by the University of California or California State University according to guidelines adopted by the International Olive Council as of 2007.

33. Practically speaking, only olives picked fresh and slightly unripe, pressed within 24 hours of harvest, and carefully monitored will become extra virgin olive oil within each of the aforementioned standards. Otherwise, the oil will be among the lower grades of "virgin," "pure," or "light" olive oil. Indeed, the timing and processing olives to make real extra virgin olive oil is delicate and time-sensitive. And logistically, there is a problem for companies that use olives from small-scale olive farmers in places like Spain. Harvesting, collecting, and processing olives from many small-scale olive ranches can inhibit the production of true grade extra virgin olive oil.

*Colavitas' Products Do Not Meet the "Extra Virgin" Olive Oil Standard*

34. In early 2010, olive oil researchers at UC Davis conducted a study of Colavitas' products, as well as the products of other olive oil companies. The UC Davis study examined olive oil products that were marketed and labeled by Colavita and other olive oil companies as "extra virgin olive oil" to American consumers in retail stores. These same products examined by the UC Davis study are, upon information and belief, marketed and labeled by Colavita and other olive oil companies as "extra virgin olive oil" and are sold to millions of consumers in the state of Florida, including Plaintiff.

35. The researchers employed standardized olive oil testing methodologies for determining whether products meet the extra virgin olive oil grade:

ICC/USDA ANALYSIS	DETERMINATIONS	INDICATORS*	ANALYTICAL	EXTRA VIRGIN STANDARDS
Free Fatty Acids (FFA)	Free fatty acids are formed by the hydrolysis of the triacylglycerols in oil during extraction, processing, and storage.	An elevated level of free fatty acid indicates hydrolyzed, oxidized and/or poor quality oil.	Analytical titration (AOCS Cc-4)	Unit: % and limit: Limit $\leq 0.8$
Peroxide Value (PV)	Peroxides are primary oxidation products that are formed when oils are exposed to oxygen, producing undesirable flavors and colors.	An elevated level of peroxides indicates oxidized and/or poor quality oil.	Analytical titration (AOCS Cc-8-20)	Unit: mEq O <sub>2</sub> /kg oil Limit $\leq 20$
UV Absorption (or conjugated diene bands)	Conjugated diene bands are formed from natural nonconjugated unsaturation in oils upon oxidation.	An elevated level of UV absorbance indicates oxidation and/or poor quality oil.	UV spectrophotometry (AOCS Cc-5-91)	Unit: AU/cm Limit for 232: $\leq 0.025$ for 268 and 278: $\leq 2.50$ , $\leq 0.22$ , and $\leq 0.01$
Stigmastane	Stigmastane is produced by thermal degradation of long-chain structural steroid found in virgin olive oil.	An elevated level of stigmastane indicates adulteration with refined oil.	Gas chromatography (GC) (ICC COI/120/Doc No. 11-2001)	Unit: mg/kg oil ICC limit $\leq 0.10$ USDA limit $\leq 0.15$
Fatty Acid Profile (FAP)	Fatty acids constitute the principal component of fat (esterified to various alcohols). Fatty acid profiles (FAP) are distinguishable markers between olive oils and some seed/oil. FAPs vary slightly depending on the season and growing region of olives.	Analysis of the fatty acid profile provides information on the authenticity of the olive oil, an indicator for adulteration with refined oil.	Gas chromatography (GC) (ICC COI/120/Doc No. 24-2001)	Unit: % of total fatty acids Limit: See Appendix
Diene Profile	Diene are major constituents of oils and are distinguishable markers between olive oils and some seed/oil.	Analysis of diene provides information on the purity of the olive oil, an indicator for adulteration with refined oil. Diene, although common in oil, is not present in refined oil. ICC limits are for olive and olive oil.	Gas chromatography (GC) (ICC COI/120/Doc No. 10-2001)	Unit: % of total fatty acids Limit: See Appendix
Carotenes (Carotenoids)	Carotenes are natural color and antioxidant.	Carotene measurement may help identify adulterated or poorly stored oil. Carotene is not present in refined oil.	GC-mass spectrometry (GC-MS) (ICC COI/120/Doc No. 15-2001, ICC COI/120/Doc No. 3/Doc. 4, 11-2002)	Unit: mg/kg oil Limit: $\leq 2.5$ for $\beta$ -carotene and $\alpha$ -carotene of the $\beta$ -carotene: $\leq 0$

\* By analyzing olive oils in which the glycerols have been broken down via addition of water. Oxidation of olive oils has been observed and noted through oxidation, a chemical reaction that is promoted by heat, light, and/or air. Refined olive oil products have been observed to be adulterated, commonly adulterated with refined oil. These quality measurements were made from olive oil by olive, improperly processed, and/or improperly stored olive processing.



36. The UC Davis study also performed more-advanced techniques for determining whether products meet the extra virgin olive oil grade:

OTHER ANALYSIS	DETERMINATIONS	INDICATORS*	ANALYSIS	EXTRA VIRGIN STANDARDS
Total Polyphenol Content	Polyphenols are important compounds that inhibit oxidation and improve the shelf life of olive oils.	Polyphenol content decreases with prolonged storage, but because polyphenols are influenced by varietal, horticultural, and processing variables, the content does not necessarily indicate oil authenticity or quality.	Modified Oenocler (1981) method; G. Pagar, J. (1981). "Polyphenols in olive oil." <i>Journal of the American Oil Chemists' Society</i> 58: 895-896.	United Nations International. Grade Extra virgin standards have not been established.
Triacylglycerols (TAGs)	Triacylglycerols are the principal component (98%) of olive oil, consisting of an ester of three fatty acids and glycerol.	The triacylglycerol method is still being evaluated as an indicator of olive oil purity.	Gas chromatography (GC) (DGE standard method C.V. 10b).	United Nations International. Grade Extra virgin standards have not been established.
1,2-Diacylglycerol Content (DAGs)	During the breakdown of triacylglycerols, diacylglycerols are formed. Truly extra virgin olive oil contains a high proportion of 1,3-diacylglycerols to 1,2 and 1,3-diacylglycerols, while olive oil from poor quality fruit and refined olive oil have elevated levels of 1,2-diacylglycerols.	The ratio of 1,2-diacylglycerols to 1,2 and 1,3-diacylglycerols is an indicator for oil quality. Refined olive oil has a high level of 1,2-diacylglycerols and is adulterated with refined oil.	Gas chromatography (GC) (DGE standard Method C.V. 140a) (ISO 29222:2007).	United Nations International. Grade Extra virgin standards have not been established.
Pyropheophytins (PPP)	Chlorophyll pigments break down to pheophytins and then pyropheophytins upon thermal degradation of olive oil.	An elevated level of pyropheophytins is an indicator for oil that is oxidized and/or adulterated with refined oil.	High performance liquid chromatography (HPLC) (DGE standard Method C.V. 150a) (ISO 29241:2002).	United Nations International. Grade Extra virgin standards have not been established.

\*Hydrolyzed means all in which triacylglycerols have been broken down via saponification of some. Oxidized means oils that have become rancid and rancid have a characteristic chemical reaction that is pronounced by heat, light and/or age. Refined means cheaper, lower-grade olive oil that is solvent extracted, thermally deodorized and bleached. Poor quality means oils that come (1) made from poor quality olives, (2) improperly processed, and/or (3) improperly stored after processing.

37. Colavitas' products do not meet the extra virgin olive oil standards, as the UC Davis study has revealed:

Tests indicate that imported "extra virgin" olive oil often fails international and USDA standards  
UC Davis Olive Center, July 2010

Table 3. Chemistry and sensory data provided by Australian Oils Research Laboratory

Brand	PV	K232	K268	ΔK	FFA	Sigma	Poly	PPP	DAGs	Sensory
Extra Virgin Standards*	(≥20)	(≤7.50)	(≤0.22)	(≤0.01)	(≤0.8)	(≤0.10)	N/A	(≤1.5)	(≤10)	Defect-free
Colavita	SAC	8	1.97	0.18	20.003	0.74	-0.03	268	11.4	72.9
	GI	11	2.13	0.13	20.003	0.57	-0.03	189	12.6	36.7
	LA	15	2.88	0.25	0.0	0.77	-0.03	150	38.7	29.6

38. Despite this, Colavita nonetheless markets, advertises, and labels its product as “extra virgin” olive oil when this claim is patently false.

*Colavitas’ False, Unfair and Deceptive Advertising Claims*

*The Colavita Brand*

39. Colavita sells Colavita Extra Virgin Olive Oil to American consumers, including consumers in the state of Florida. Colavitas’ marketing campaign to Florida consumers for this product also speaks for itself:

**COLAVITA®**

**Extra Virgin Olive Oil**

America's best-selling Italian Extra Virgin Olive Oil. Cold-pressed from the best fruit of the olive tree, it is the natural juice squeezed from Italian olives one day after the harvest. Unmatched for freshness and flavor, COLAVITA guarantees its product to be 100% Italian olive oil and properly labeled. A true Italian.



40. Colavita seeks to dupe consumers in Florida into believing that Colavita is true grade extra virgin olive oil, when this product does not meet the “extra virgin” standard. Colavita has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually meets the extra virgin olive oil grade, as advertised.

41. Colavita knows that its Colavita Brand olive oil labeled as "Extra Virgin" does not meet the state, national or international standard for "extra virgin."

*Colavitas' Profit Motives for Labeling its Product as "Extra Virgin" and the Geo-Political and Economic Climate in Which Colavita Makes these False, Unfair and Deceptive Claims*

42. Americans spend nearly a billion dollars a year consuming olive oil. Indeed, the United States is the world's third-largest consumer of olive oil, 99% percent of which comes from foreign producers like Colavita.

43. In the last 20 years, the United States has become a worthy producer of olive oils, and especially extra virgin olive oils. Presuming that American consumers' pallets are unsophisticated, olive oil producers' worldwide took notice of American domestic olive oil production and in an effort to compete, many sophisticated foreign producers recognized that they could make greater profits if they utilized inferior ingredients. More importantly, foreign producers still continued to call their inferior grade olive oil products "extra virgin," when it was not true.

44. To be sure, extra-virgin olive oil has earned the trust of consumers looking for better health and full-flavored oil. However, increased global competition tempts some producers to misrepresent their products in pursuit of profit, as has been done to American consumers. Consumers may think their EVOO is made using the best methods and ingredients possible, but it is actually counterfeit EVOO.

45. Over the years, there have been media reports of deception in the olive oil business, where extra virgin olive oil was diluted and is considered counterfeit. Their dilution process with other olive oils makes detection of the adulteration difficult.



46. These manufacturers and producers, including but not limited to Colavita, are well aware of what constitutes EVOO as they are regulated in countries outside of the United States.

47. The methodology/process required to produce EVOO makes it impossible for the Colavita to sell the volume of true grade EVOO as Colavita claims they do. As stated above, because many of the olives come from small farmers in places like Spain, it is sometimes logistically impossible to make extra virgin olive oil from these olives, given the time-sensitive and delicate processes that are necessary to make true grade extra virgin olive oil. Colavita uses the precious little true extra virgin olive oil for countries whose consumers have a longer history of consuming extra virgin olive oil and have a taste pallet that commands only their true high quality product. While Colavita saves the "good stuff" for other consumer markets, such as European markets, Colavita sells Americans the sub-standard and rancid olive oil, mixing and manipulating the chemistry of the oil so that it, under a microscope, approximates (but falls far short of) true grade extra virgin olive oil.

48. The same foreign producers that stand to profit from these misleading and deceptive trade practices are in control of the very agencies regulating the oil producers outside of the United States. As such, these agencies have been slow to react.

49. In 1993, the FDA ordered a recall of Rubino U.S.A. Inc., (Cincinnati, Ohio) olive oils which were nothing more than canola oil.

50. In 1997, the Canadian Food Inspection Agency began conducting tests on 100 oils that claimed to be 100% olive oil and in 1999 the CFIA concluded that 20 per cent of the oils were fake.

51. In 2007, American supermarket chain ShopRite (United States) recalled certain olive oils after it was discovered that they were counterfeit.

52. In March 2008, 400 Italian police officers conducted "Operation Golden Oil," arresting 23 people and confiscating 85 farms after an investigation revealed a large-scale scheme to relabel oils from other Mediterranean nations as Italian.

53. In April 2008, another operation impounded seven olive oil plants and arrested 40 people in nine provinces of northern and southern Italy for adding chlorophyll to sunflower and soybean oil and selling it as extra virgin olive oil, both in Italy and abroad. 25,000 liters of the fake oil were seized and prevented from being exported.

54. On December 22, 2008, the Guardia Civil in La Rioja (Spain) warned about the possible sale of adulterated olive oil in the area. This warning came after 550 liters of oil was found in a large container labeled "Astispumante 1510" in Rincón de Soto and after the theft of 1,750 liters of oil was reported in the area on December 18, 2008.

55. The detection of counterfeit olive oils is often complicated with no single test that can accomplish the task. The two primary categories of testing are chemical and sensory.

56. The accepted sensory standards require the oils have zero defects and greater than zero fruitiness. For years, trained olive oil tasters who have served on recognized sensory panels have reported that much of the olive oil sold in the United States as "extra virgin" does not meet this modest sensory standard.

57. Money is at stake. Extra-virgin oil is marketed as a premium consumer product.

58. At a Publix grocery store in Boca Raton, FL, a 750-milliliter bottle of Colavita Brand extra-virgin olive oil costs \$17.99, while the a 500-milliliter bottle of virgin olive oil costs \$8.99.

59. As such, sophisticated producers are able to fool many of the chemical tests. However, the sensory tests are not easily fooled.

60. While the misrepresentations concerning counterfeit EVOO is widespread and long standing, it was not until the researchers at UC Davis conducted extensive research on many brands, including but not limited to the Colavitas' brand, that the public eye was keyed into the deception.

61. The UC Davis report is critical to unpacking the Colavitas' scheme. What is really going on is that Colavita does not respect American consumer pallets for olive oil and are banking on the fact that Americans will be duped by the label of "extra virgin" without the ability for themselves to be able to taste that it is not. The UC Davis report brought this advertising deception to light.

62. Plaintiff seeks to end the Colavitas' scheme of selling fake extra virgin olive oil in the state of Florida.

#### COUNT I

**For Violations of the Florida Deceptive and Unfair Trade Practices Act,  
Florida Statutes §§501.201, *et seq.*,  
On Behalf of Plaintiff and the Class**

63. Plaintiff realleges and incorporates by reference the allegations contained in the above referenced paragraphs as if fully set forth herein.

64. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.* (the "Act"). The stated purpose of the Act is to "protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. §501.202(2).

65. Plaintiff is a consumer as defined by Fla. Stat. §501.203. Colavita Brand is a good within the meaning of the Act.

66. Colavita is engaged in trade or commerce within the meaning of the Act.

67. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

68. Fla. Stat. §501.204(2) states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.” Colavitas’ unfair and deceptive practices are likely to deceive – and have deceived – the consumer acting reasonably in the circumstances, and violate Fla. Stat. §500.04 and 21 U.S.C. §343. Further, FTC rules and regulations require that Colavita have the same level of substantiation for its advertisements at the time they are made as it claimed in the advertisement. Colavitas’ claims lack reliable and competent proof.

69. Colavita has violated the Act by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

70. Plaintiff and the Class have been aggrieved by Colavitas’ unfair and deceptive practices in that they paid for Colavita Brand and did not receive the benefit of their bargains.

71. The damages suffered by Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Colavita, as more fully described herein.

72. Pursuant to Fla. Stat. §501.211(1), Plaintiff and the Class seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Colavita and for restitution and disgorgement.

73. Additionally, pursuant to Fla. Stat. §§501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys' fees and costs.

## **COUNT II**

### **Breach of Express Warranty On Behalf of Plaintiff and the Class**

74. Plaintiff realleges and incorporate by reference the allegations contained in all preceding paragraphs, except for the paragraphs of Count I, which are not incorporated by reference, as if fully set forth herein.

75. Plaintiff, and each member of the Class, formed a contract with Colavita at the time Plaintiff and the other members of the Class purchased Colavita Brand. The terms of that contract include the promises and affirmations of fact made by Colavita on its product labels and through its marketing campaign, as described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Colavita on the other.

76. All conditions precedent to Colavitas' liability under this contract, including notice, have been performed by Plaintiff and the Class.

77. Colavita breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the products as advertised and described above.

78. As a result of Colavitas' breach of its contract and warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Colavita Brand they purchased.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a judgment:

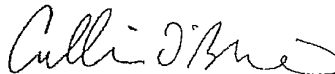
- A. Certifying the Class as requested herein, and appointing Plaintiff and Class Representative and Plaintiff's counsel as Class Counsel;
- B. Awarding Plaintiff and the proposed Class members damages;
- C. Awarding restitution and disgorgement of Colavitas' revenues to Plaintiff and the proposed Class members;
- D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Colavita from continuing the unlawful practices as set forth herein, and directing Colavita to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Colavita by means of any act or practice declared by this Court to be wrongful;
- E. Ordering Colavita to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs; and
- G. Providing such further relief as may be just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: August 27, 2010

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Case 0:10-cv-61793-JAL Document 1-1 Entered on FLSD Docket 09/27/2010 Page 6 of 82

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

JOSEPH NACHIO, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

vs.

AMERICAN RICE INC., POMPEIAN INC.,  
and SALOV NORTH AMERICA  
CORPORATION,

Defendants.

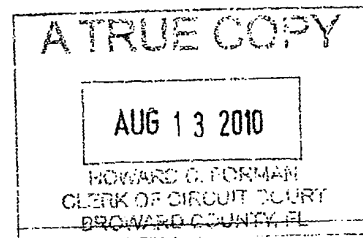
Case No.:

10 33154

CLASS REPRESENTATION

JURY TRIAL DEMANDED

13



CLASS ACTION COMPLAINT



Plaintiff Joseph Nachio ("Plaintiff"), brings this action on behalf of himself and all others similarly situated against defendants American Rice Inc. ("American Rice"), Pompeian Inc. ("Pompeian"), and Salov North America Corporation ("Salov"), and alleges:

#### **JURISDICTION AND VENUE**

1. This action is brought as a class action pursuant to Florida Rule of Civil Procedure 1.220.

2. The damages suffered and sought to be recovered herein total, in the aggregate, in excess of the minimum jurisdictional limits of this Court. Plaintiff's individual claims do not exceed the sum or value of \$75,000.00.

3. Venue is proper in Broward County, Florida because the causes of action asserted herein occurred and/or accrued, among other places, in Broward County, Florida. Venue is also appropriate in this Court because Defendants conduct substantial business in Broward County and have targeted consumers to purchase their products and has advertised in various media in Broward County.

4. This action is not removable pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §1332 (2005), pursuant to *Cappuccitti v. DirecTV, Inc.*, No. 09-14107, 2010 WL 2803093, at \*5 (11th Cir. July 19, 2010).

#### **NATURE OF THE ACTION**

5. This is a consumer class action on behalf of purchasers of Defendants' products that are falsely and deceptively labeled as "extra virgin olive oil" ("EVOO"), which is the highest and most expensive grade for olive oil product. Defendants market and sell for a substantial premium their products as being "extra virgin olive oil" when the products clearly do not meet or warrant this "extra virgin" olive oil product grade or the price premium for which they are sold.

6. The International Olive Counsel ("IOC"), the United States Department of Agriculture ("USDA"), and the state of California, the United States' largest domestic olive oil producer, have delineated specific standards for the "extra virgin olive oil" grade. Although they are well aware of these standards, the Defendants do not meet these standards for their products, including the "organoleptic test" (herein referred to as "sensory test").<sup>1</sup>

7. Indeed, the University of California at Davis ("UC Davis") recently conducted a comprehensive study delineating exactly how the Defendants' products do not meet these standards (the "Davis Study"). Under the Davis Study, the Defendants' products, which were advertised, marketed and sold for a premium as "extra virgin olive oil," tested at lower grades of olive oil.

8. Upon information and belief, these same products tested in the Davis Study are sold to consumers throughout the state of Florida. Given the time-sensitive and fragile logistic processes involved in mass producing true extra virgin olive oil, the Defendants cannot produce nearly the quantities of extra virgin olive oil they claim to sell into the United States. Indeed, the Defendants do not even bother sending Americans true grade "extra virgin olive oil." The Defendants use the precious little true extra virgin olive oil for sale to consumers in countries that have a longer history of consuming extra virgin olive oil and a taste pallet that commands only this true high quality product. The Defendants do not respect the American olive oil taste pallet as a whole and bank on the fact that Americans cannot discern between rancid or adulterated olive oil and true extra virgin olive oil.

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<sup>1</sup> Since 1948, the USDA regulated olive oil grades and utilized chemical and sensory standards. In light of the volumes of olive oil imported into the United States, on October 25, 2010, the USDA will incorporate many of the IOC regulations.

9. To further this advertizing deception, the Defendants manipulate the chemistry of their olive oil and synthetically attempt to reach chemical balances that approximate what real "extra virgin olive oil" might look light underneath a microscope. But the Defendants cannot fake all the indicators of what true extra virgin olive oil really is, including the sensory test, which is exactly what the Davis Study revealed.

10. Plaintiff, like hundreds of thousands, if not millions, of other Floridians have been duped by the Defendants' false, deceptive and unfair marketing campaign of their purportedly "extra virgin olive oil." In short, Plaintiff and the class have not received the benefit of their bargains as a result of Defendants' false, deceptive and unfair marketing campaign, including Defendants' product labels. Plaintiff and the class have sought to purchase real "extra virgin olive oil" and have instead received rancid or adulterated olive oil. And, indeed, Plaintiff and the class have paid a premium price on the fake "extra virgin olive oil" sold to them by Defendants.

11. In this action, Plaintiff seeks to recover the benefit of the bargain for himself and the class and to enjoin the Defendants from continuing with their false, deceptive and unfair marketing campaign of products that do not meet the "extra virgin olive oil" standard as advertised.

#### **PARTIES**

12. At all times relevant to this matter, Plaintiff Joseph Nachio resided and continues to reside in this County. During the class period, Plaintiff was exposed to and saw Defendants' advertising claims, purchased Pompeian Extra Virgin Olive Oil (also referred to herein as "Pompeian Brand"), Bertolli Extra Virgin Olive Oil (also referred to herein as "Bertolli Brand"), and Filippo Berio Extra Virgin Olive Oil (also referred to herein as "Filippo Berio Brand"), and suffered injury in fact and lost money because of the unfair and deceptive trade practices described herein. Plaintiff did not receive the benefit of his bargain in each purchase of

Pompeian Brand, Bertolli Brand, and Filippo Berio Brand. Plaintiff further paid a price premium for each purchase of Pompeian Brand, Bertolli Brand, and Filippo Berio Brand.

13. Defendant American Rice is a wholly owned subsidiary of Grupo SOS. Grupo SOS is a leading Spanish quoted food company, and the sales leader in the segments it operates in edible oils, with the Bertolli Brand being the strongest selling olive oil in the world. American Rice is incorporated in the State of Delaware and headquartered in Houston, Texas. American Rice promotes markets, distributes and sells Bertolli Extra Virgin Olive Oil to thousands of consumers in the State of Florida, including Broward County, Florida. Upon information and belief, Grupo SOS manufactures Bertolli Brand olive oil labeled as "Extra Virgin" and imports it to the United States where its operational unit, American Rice, markets, distributes, and sells the oil in the United States. The Bertolli Brand commands 40 percent of the U.S. market.

14. Defendant Pompeian is incorporated in Maryland and is headquartered in Baltimore. Defendant Pompeian promotes markets, distributes and sells Pompeian Extra Virgin Olive Oil to thousands of consumers in the State of Florida, including Broward County, Florida. Pompeian is a jointly held entity with Spanish and Moroccan owners. Pompeian imports a significant share of the EVOO consumed in the United States.

15. Defendant Salov is incorporated in New York and headquartered in Lyndhurst, New Jersey. Defendant Salov promotes markets, distributes and sells Filippo Berio Brand olive oil labeled as "Extra Virgin" to thousands of consumers in the State of Florida, including Broward County, Florida. Defendant Salov is a wholly owned subsidiary of Salov S.P.A and claims 20% of the world's EVOO market.

### CLASS REPRESENTATION ALLEGATIONS

16. Plaintiff brings this lawsuit on behalf of himself and the proposed Class members under Rules 1.220(b)(2) and (b)(3) of the Florida Rules of Civil Procedure. The proposed Class consists of:

*All persons who purchased either Bertolli, Filippo Berio, or Pompeian brand products labeled as "extra virgin" olive oil in the State of Florida.*

17. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint. Specifically excluded from the proposed Class are the Defendants, their officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or entities controlled by the Defendants, and their heirs, successors, assigns, or other persons or entities related to or affiliated with the Defendants and/or their officers and/or directors, or any of them; the Judge assigned to this action, and any member of the Judge's immediate family.

18. *Numerosity.* The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff. The true number of Class members is known by the Defendants, their distributors and retailers, however, and thus, may be notified of the pendency of this action by first class mail, electronic mail, and by published notice.

19. *Existence and Predominance of Common Questions of Law and Fact.* Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) whether Defendants had adequate substantiation for their claims prior to making them;
- (b) whether the claims discussed above are true, or are misleading, or reasonably likely to deceive;
- (c) whether Defendants' alleged conduct violates public policy;
- (d) whether the alleged conduct constitutes violations of the laws asserted herein;
- (e) whether Defendants engaged in false or deceptive advertising;
- (f) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;
- (g) whether Plaintiff and Class members are entitled to declaratory and injunctive relief.

20. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that the Defendants were unjustly enriched as a result of Plaintiff's and the Class' respective purchases of EVOO.

21. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

22. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against the Defendants. It would thus be

virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

23. In the alternative, the Class may also be certified because:

(a) the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudication with respect to individual Class members that would establish incompatible standards of conduct for the Defendants;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Defendants have acted or refused to act on grounds generally applicable to the Class thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

24. The claims asserted herein are applicable to all customers throughout the State of Florida who purchased EVOO. Adequate notice can be given to Class members directly using



information maintained in Defendants' records, the records of third parties, or through notice by publication.

25. Damages may be calculated, in part, from the sales information maintained in Defendants' records, or the records of third parties, so that the cost of administering a recovery for the Class can be minimized. However, the precise amount of damages available to Plaintiff and the other members of the Class is not a barrier to class certification.

26. Unless a class is certified, Defendants will retain monies received as a result of their conduct that was taken from Plaintiff and proposed Class members. Unless a class-wide injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class will continue to be misled.

#### **SUBSTANTIVE ALLEGATIONS**

##### ***Extra Virgin Olive Oil***

27. American Consumers spend an amazing \$700 million a year on olive oil labeled as "extra virgin" not realizing that many of these products, including those purchased from Defendants, are not worthy of the benefit of the bargain, much less the premium prices attached to the products.

28. At the pinnacle of the olive oil industry sits extra-virgin olive oil — the gold standard. The term "extra virgin" is defined by the International Olive Counsel ("IOC"), the USDA, and the state of California, the United State's largest domestic olive oil producer.

29. Since each of the Defendants are required to comply with the IOC, the USDA, and the laws of the state of California, in those respective jurisdictions, Defendants clearly know what the term "extra virgin" means.

30. Specifically, the IOC defines "extra virgin" olive oil as: Extra virgin olive oil: virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and the other characteristics of which correspond to those fixed for this category in this standard. The IOC defines a sensory taster as an individual who is specialized in the sensory analysis of a specific product and has a basic understanding of the preparation of the product and market preferences. The IOC utilizes a protocol for its sensory testing which includes, but is not limited to, perception, sensation, and sensitivity.

31. Since 1948, the USDA has regulated olive oil grades and utilized both chemical and sensory standards to determine quality. Currently, quality is rated on a scale of A, which has the characteristics of what the IOC and others refer to as EVOO, B, and C. In light of the volumes of olive oil imported into the United States, on October 25, 2010, the USDA will incorporate many of the IOC regulations into an updated set of voluntary standards.

32. The new USDA standards define "U.S. Extra Virgin Olive Oil" as: virgin olive oil which has excellent flavor and odor (median of defects equal to zero and median of fruitiness greater than zero) and a free fatty acid content, expressed as oleic acid, of not more than 0.8 grams per 100 grams, and meets the additional requirements as outlined in §52.1539, as appropriate. Section 52.1539 sets forth the criteria to ascertain the grade of the oil using both chemical and sensory standards.

33. The state of California defines "extra virgin" olive oil as:

Extra virgin olive oil means virgin olive oil which has a free acidity, expressed as oleic acid, of not more than 0.8 grams per 100 grams oil, has a peroxide value of not more than 20 milliequivalent peroxide oxygen per kilogram oil and would meet the sensory standards of extra virgin olive oil as determined by a taste panel certified by the International Olive Council, or, if the International Olive Council ceases to certify taste panels, would meet the sensory standards of a taste panel that is operated by the University of California or California State University according to guidelines adopted by the International Olive Council as of 2007.

34. Practically speaking, only olives picked fresh and slightly unripe, pressed within 24 hours of harvest, and carefully monitored will become extra virgin olive oil within each of the aforementioned standards. Otherwise, the oil will be among the lower grades of “virgin,” “pure,” or “light” olive oil. Indeed, the timing and processing olives to make real extra virgin olive oil is delicate and time-sensitive. And logistically, this is a problem for companies that use olives from small-scale olive farmers in places like Spain. Harvesting, collecting, and processing olives from many small-scale olive ranches can inhibit the production of true grade extra virgin olive oil.

***Defendants’ Products Do Not Meet the “Extra Virgin” Olive Oil Standard***

35. In early 2010, olive oil researchers at UC Davis conducted a study of Defendants’ products, as well as the products of other olive oil companies. The UC Davis study examined olive oil products that were marketed and labeled by Defendants and other olive oil companies as “extra virgin olive oil” to American consumers in retail stores. These same products examined by the UC Davis study are, upon information and belief, marketed and labeled by Defendants and other olive oil companies as “extra virgin olive oil” and are sold to millions of consumers in the state of Florida, including Plaintiff.

36. The researchers employed standardized olive oil testing methodologies for determining whether products meet the extra virgin olive oil grade:

IOC/USDA ANALYSIS	DETERMINATIONS	INDICATORS*	ANALYSES	EXTRA VIRGIN STANDARDS
Free Fatty Acids (FFA)	Free fatty acids are formed by the hydrolysis of the triacylglycerols in oils during extraction, processing, and storage.	An elevated level of free fatty acid indicates hydrolyzed, oxidized and/or poor-quality oil.	Analytical titration (AOCS Ca 5a-40).	Units: % as oleic acid. Limits: $\leq 0.8$ .
Peroxide Value (PV)	Peroxides are primary oxidation products that are formed when oils are exposed to oxygen, producing undesirable flavors and odors.	An elevated level of peroxides indicates oxidized and/or poor-quality oil.	Analytical titration (AOCS Cd 8b-60).	Units: mEq O <sub>2</sub> /kg oil. Limits: $\leq 20$ .
UV Absorption (for conjugated double bonds)	Conjugated double bonds are formed from natural nonconjugated unsaturation in oils upon oxidation.	An elevated level of UV absorbance indicates oxidized and/or poor-quality oil.	UV spectrophotometry (AOCS Ch 5-91).	Units: K*1cm. Limits for K232, K232 and $\Delta K \leq 2.50$ , $\leq 0.22$ , and $\leq 0.01$ .
Stigmasteradiene	Stigmasteradiene is produced by thermal dehydration of beta-sitosterol, a natural sterol found in virgin olive oils.	An elevated level of stigmasteradiene indicates adulteration with refined oil.	Gas chromatography (GC) (IOC COI/T.20/Doc No. 11-2001).	Units: mg/kg oil. IOC limit: $\leq 0.10$ . UGDA limit: $\leq 0.15$ .
Fatty Acid Profile (FAP)	Fatty acids constitute the principal component of fats (saturated or unsaturated). Fatty acid profiles (FAP) are distinguishable markers between olive oils and some seed/nut oils (FAPs vary slightly depending on the varieties and growing region of olives).	Analysis of the fatty acid profile provides information on the authenticity of the olive oil; an indicator for adulteration with refined oils.	Gas chromatography (GC) (IOC COI/T.20/Doc No. 24-2001).	Units: % of total fatty acids. Limits: See Appendix.
Sterols Profile	Sterols are minor constituents of oils and are distinguishable markers between olive oils and some seed/nut oils.	Analysis of sterols provides information on the purity of the olive oil; an indicator for adulteration with refined seed/nut oils, although some sterol values may exceed IOC limits due to climate and olive varietal.	Gas chromatography (GC) (IOC COI/T.20/Doc No. 10-2001).	Units: % of total sterols (mg/kg). Limits: See Appendix.
Sensory (Organoleptic)	Sensory refers to taste, odor and mouthfeel.	Sensory assessment can help identify oils that are of poor-quality, oxidized, and/or adulterated with other oils.	IOC recognized panel of 8-12 people evaluates oils for sensory characteristics (IOC COI/T.20/Doc No. 15/Rev 2-2007, IOC COI/T.15/Rev No.3/Rev 4-11-2009).	Panel must find median of defects = 0 and median of the fruity attributes $> 0$ .

\*Hydrolyzed means oils in which triacylglycerols have been broken down via addition of water.  
Oxidized means oils that have become stale and rancid through oxidation, a chemical reaction that is promoted by heat, light, and/or age.  
Refined means cheaper, lower-grade oils that are solvent extracted, thermally deodorized and bleached.  
Poor quality means oils that were made from poor-quality olives, improperly processed, and/or improperly stored after processing.

37. The UC Davis study also performed more-advanced techniques for determining whether products meet the extra virgin olive oil grade:

OTHER ANALYSIS	DETERMINATIONS	INDICATORS*	ANALYSIS	EXTRA VIRGIN STANDARDS
Total Polyphenol Content	Polyphenols are important antioxidants that inhibit oxidation and improve the shelf-life of olive oils.	Polyphenol content decreases with prolonged storage, but because polyphenols are influenced by varietal, horticultural, and processing variables the content does not necessarily indicate oil authenticity or quality.	Modified Gutfinger (1981) method. Gutfinger, T. (1981). "Polyphenols in olive oils." <i>Journal of the American Oil Chemists' Society</i> 58: 895-899.	Units: mg caffeic acid/kg oil. Limit: Extra virgin standards have not been established.
Triacylglycerols (TAGs)	Triacylglycerols are the principal components (98%) of olive oil consisting of an ester of three fatty acids and glycerol.	The triacylglycerols method is still being evaluated as an indicator of olive oil purity.	(Gas chromatography (GC) DGF Standard Method C-VI 10b)	Units: % of total triacylglycerols. Limits: Extra virgin standards have not been established.
1,2-Diacylglycerol Content (DAGs)	During the breakdown of triacylglycerols, diacylglycerols are formed. Fresh extra virgin olive oil contains a high proportion of 1,2-diacylglycerols to 1,2- and 1,3-diacylglycerols, while olive oil from poor quality fruits and refined olive oil have elevated levels of 1,3-diacylglycerols.	The ratio of 1,2-diacylglycerols to 1,2- and 1,3-diacylglycerols is an indicator for oil that is hydrolyzed, oxidized, of poor quality, and/or adulterated with refined oil.	Gas chromatography (GC) (DGF Standard Method C-VI 1410b) - ISO 29822:2009.	Units: % total 1,2- and 1,3-diacylglycerols. Australian Olive Association (AOA) limit: $\leq 40$ .
Pyropheophytins (PPP)	Chlorophyll pigments break down to pheophytins and then pyropheophytins upon thermal degradation of olive oil.	An elevated level of pyropheophytins is an indicator for oil that is oxidized and/or adulterated with refined oil.	High performance liquid chromatography (HPLC) (DGF Standard Method C-VI 1510a) - ISO 29841:2009.	Units: % total pheophytins. Australian Olive Association (AOA) limit: $\leq 15$ .

\* Hydrolyzed means oils in which triacylglycerols have been broken down via addition of water. Oxidized means oils that have become rancid through oxidation, a chemical reaction that is promoted by heat, light, and/or age. Refined means cheaper, lower-grade oils that are solvent extracted, thermally deodorized and bleached. Poor quality means oils that were (1) made from poor-quality olives, (2) improperly processed, and/or (3) improperly stored after processing.

38. Defendants' products do not meet the extra virgin olive oil standards, as the UC Davis study has revealed:

Tests indicate that imported "extra virgin" olive oil often fails international and USDA standards  
 UC Davis Olive Center, July 2010  
 Table 3. Chemistry and sensory data provided by Australian Oils Research Laboratory

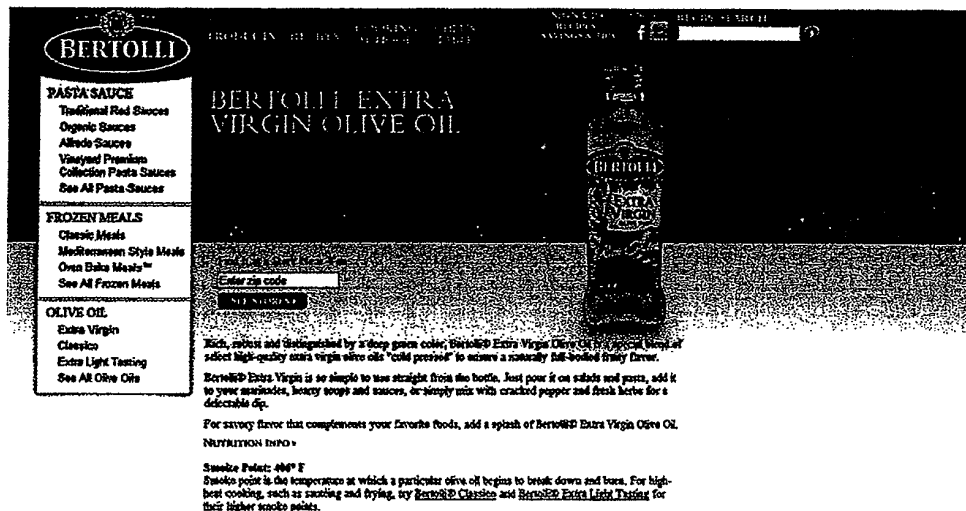
Brand		PV	K232	K268	$\Delta K$	FFA	Stigma	Poly	PPP	DAGs	Sensory
Extra Virgin Olive Oil		1.70	1.27	1.47	0.03	0.04	0.00	0.00	0.00	0.00	0.00
Filippo Berio	SAC	11	2.46	0.18	<0.003	0.30	<0.03	200	10.3	42.2	EXTRA VIRGIN
	SF	12	2.18	0.14	<0.003	0.37	<0.03	212	12.0	40.7	VIRGIN
	LA	11	2.12	0.15	<0.003	0.35	<0.03	247	13.7	42.0	VIRGIN
Bertolli	SAC	9	2.29	0.19	<0.003	0.41	<0.03	195	17.8	38.1	VIRGIN
	SF	9	2.24	0.16	<0.003	0.35	<0.03	266	14.3	39.2	VIRGIN
	LA	12	2.42	0.17	<0.003	0.32	<0.03	192	20.8	43.4	VIRGIN
Pompeian	SAC	11	2.50	0.19	<0.003	0.59	<0.03	132	12.1	38.5	VIRGIN
	SF	13	2.60	0.16	<0.003	0.51	<0.03	111	10.5	31.5	VIRGIN
	LA	13	2.56	0.17	<0.003	0.49	<0.03	188	16.3	35.9	VIRGIN

39. Despite this, the Defendants nonetheless market, advertise, and label their products when this claim is patently false.

*Defendants' False, Unfair and Deceptive Advertising Claims*

*Defendant American Rice – the Bertolli Brand*

40. Defendant American Rice sells Bertolli Brand olive oil labeled as “Extra Virgin” to American consumers, including consumers in the state of Florida. Defendant American Rice’s marketing campaign to Florida consumers for this product speaks for itself:



41. Defendant American Rice seeks to dupe consumers in Florida into believing that Bertolli Brand is true grade extra virgin olive oil, when this product does not meet the “extra virgin” standard. Defendant American Rice has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually met the extra virgin olive oil grade, as advertised.

42. Defendant American Rice knows that its Bertolli Brand olive oil labeled as “Extra Virgin” does not meet the state, national or international standard for “extra virgin.”

*Defendant Pompeian – the Pompeian Brand*

43. Defendant Pompeian sells Pompeian Extra Virgin Olive Oil to American consumers, including consumers in the state of Florida. Defendant Pompeian's marketing campaign to Florida consumers for this product also speaks for itself:

**OLIVE OILS****Extra Virgin Olive Oil**

Only the Mediterranean's finest olives are selected for Pompeian Extra Virgin Olive Oil. Produced by the first pressing of these remarkable olives through the centuries-old cold pressing process, Pompeian Extra Virgin Olive Oil is extremely low in acidity, which accounts for its robust taste and heady fragrance. To fully appreciate the nuances of its flavor, you'll especially enjoy it in dressings, salads, vinaigrettes or as a table condiment for dipping bread or crudite.

**NAOAA Seal quality assurance**

The North American Olive Oil Association has created a special seal program. Pompeian is the first brand of olive oil to carry this seal. To learn more about this quality assurance, select the link in the left navigation bar.



44. Defendant Pompeian seeks to dupe consumers in Florida into believing that Pompeian is true grade extra virgin olive oil, when this product does not meet the "extra virgin" standard. Defendant Pompeian has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually met the extra virgin olive oil grade, as advertised.




45. Defendant Pompeian knows that its Pompeian Brand olive oil labeled as “Extra Virgin” does not meet the state, national or international standard for “extra virgin.”

*Defendant Salov – the Filippo Berio Brand*

46. Defendant Salov sells Filippo Berio Brand olive oil labeled as “Extra Virgin” to American consumers, including consumers in the state of Florida. Like the other defendants, defendant Salov’s marketing campaign to Florida consumers for this product speaks for itself:

**Filippo Berio Extra Virgin Olive Oil**  
*For dressings, marinades and dip for breads*



**T**his fine aromatic oil is made from the first cold-pressing of the finest olives, and is distinguished by its full flavor, low acidity, and deep greenish-gold color. Filippo Berio Extra Virgin Olive Oil enhances the flavor of salad dressings, sauces, and marinades; is a wonderful finish to vegetables, rice dishes and soups and is perfect for dipping bread and seafood such as lobster. Try it tonight in Chicken Paillard Salad with Tomatoes and Basil.

Because of its distinctive, full flavor, Extra Virgin Olive Oil is extremely popular for home “olive oil tastings,” a social phenomenon quickly gaining popularity with food enthusiasts — almost as popular as wine tastings in many circles.

It’s fun and easy to host your own tasting — click here for some basic guidelines.

Our Extra Virgin Olive Oil is also available as an easy-to-use and convenient spray.

47. Defendant Salov seeks to dupe consumers in Florida into believing that Filippo Berio Brand is true grade extra virgin olive oil, when this product does not meet the “extra



virgin” standard. Defendant Salov has successfully achieved this ploy by causing Florida consumers, including Plaintiff, to purchase this falsely advertised product with the belief that the product actually met the extra virgin olive oil grade, as advertised.

48. Defendant Salov knows that its Filippo Berio Brand olive oil labeled as “Extra Virgin” does not meet the state, national or international standard for “extra virgin.”

***Defendants’ Profit Motives for Labeling their Products as “Extra Virgin” and the Geo-Political and Economic Climate in Which Defendants Make these False, Unfair and Deceptive Claims***

49. Americans spend nearly a billion dollars a year consuming olive oil. Indeed, the United States is the world’s third-largest consumer of olive oil, 99% percent of which comes from foreign producers like Defendants.

50. In the last 20 years, the United States has become a worthy producer of olive oils, and especially extra virgin olive oils. Presuming that American consumers’ pallets are unsophisticated, olive oil producers’ worldwide took notice of American domestic olive oil production and in an effort to compete, many sophisticated foreign producers recognized that they could make greater profits if they utilized inferior ingredients. More importantly, foreign producers still continued to call their inferior grade olive oil products “extra virgin,” when it was not true.

51. To be sure, extra-virgin olive oil has earned the trust of consumers looking for better health and full-flavored oil. However, increased global competition tempts some producers to misrepresent their products in pursuit of profit, as has been done to American consumers. Consumers may think their EVOO is made using the best methods and ingredients possible, but it is actually counterfeit EVOO.

52. Over the years, there have been media reports of deception in the olive oil business, where extra virgin olive oil was diluted and is considered counterfeit. This dilution process with other olive oils makes detection of the adulteration difficult.

53. These manufacturers and producers, including but not limited to Defendants, are well aware of what constitutes EVOO as they are regulated in countries outside of the United States.

54. The methodology/process required to produce EVOO makes it impossible for the Defendants to sell the volume of EVOO they do. As stated above, because many of the olives come from small farmers in places like Spain, it is sometimes logistically impossible to make extra virgin olive oil from these olives, given the time-sensitive and delicate processes that are necessary to make true grade extra virgin olive oil. The Defendants use the precious little true extra virgin olive oil for countries whose consumers have a longer history of consuming extra virgin olive oil and have a taste pallet that commands only this true high quality product. While the Defendants save the "good stuff" for other consumer markets, such as European markets, the Defendants sell Americans the sub-standard and rancid olive oil, mixing and manipulating the chemistry of the oil so that it, under a microscope, approximates (but falls far short of) true grade olive oil.

55. The same foreign producers that stand to profit from these misleading and deceptive trade practices are in control of the very agencies regulating the oil producers outside of the United States. As such, these agencies have been slow to react.

56. In 1993, the FDA ordered a recall of Rubino U.S.A. Inc., (Cincinnati, Ohio) olive oils which were nothing more than canola oil.

57. In 1997, the Canadian Food Inspection Agency began conducting tests on 100 oils that claimed to be 100% olive oil and in 1999 the CFIA concluded that 20 per cent of the oils were fake.

58. In 2007, American supermarket chain ShopRite (United States) recalled certain olive oils after it was discovered that they were counterfeit.

59. In March 2008, 400 Italian police officers conducted "Operation Golden Oil," arresting 23 people and confiscating 85 farms after an investigation revealed a large-scale scheme to reliable oils from other Mediterranean nations as Italian.

60. In April 2008, another operation impounded seven olive oil plants and arrested 40 people in nine provinces of northern and southern Italy for adding chlorophyll to sunflower and soybean oil and selling it as extra virgin olive oil, both in Italy and abroad. 25,000 liters of the fake oil were seized and prevented from being exported.

61. On December 22, 2008, the Guardia Civil in La Rioja (Spain) warned about the possible sale of adulterated olive oil in the area. This warning came after 550 liters of oil was found in a large container labeled "Astispumante 1510" in Rincón de Soto and after the theft of 1,750 liters of oil was reported in the area on December 18, 2008.

62. The detection of counterfeit olive oils is often complicated with no single test that can accomplish the task. The two primary categories of testing are chemical and sensory.

63. The accepted sensory standards require the oils have zero defects and greater than zero fruitiness. For years, trained olive oil tasters who have served on recognized sensory panels have reported that much of the olive oil sold in the United States as "extra virgin" does not meet this modest sensory standard.

64. Money is at stake. Extra-virgin oil is marketed as a premium consumer product.

65. At a Publix grocery store in Boca Raton, FL, a 750-milliliter bottle of Bertolli Brand extra-virgin olive oil costs \$9.99, while the same-size bottle of extra light olive oil costs \$8.99.

66. In addition, at the same Publix store, a 750-milliliter bottle of Filippio Berrio Brand extra-virgin olive oil costs \$8.99, while the same size bottle of extra light olive oil costs \$5.99.

67. Further, at the same Publix store, a 946-milliliter bottle of Pompeian Brand extra-virgin olive oil costs \$11.89, while the same size bottle of extra light olive oil costs \$10.99.

68. As such, sophisticated producers are able to fool many of the chemical tests. However, the sensory tests are not easily fooled.

69. While the misrepresentations concerning counterfeit EVOO is widespread and long standing, it was not until the researchers at UC Davis conducted extensive research on many brands, including but not limited to the Defendants' brands, that the public eye was keyed into the deception.

70. The UC Davis report is critical to unpacking the Defendants' scheme. What is really going on is that the Defendants do not respect American consumer pallets for olive oil and are banking on the fact that Americans will be duped by the label of "extra virgin" without the ability for themselves to be able to taste that it is not. The UC Davis report brought this advertising deception to light.

71. Plaintiff seeks to end the Defendants' scheme of selling fake extra virgin olive oil in the state of Florida.

COUNT I

**For Violations of the Florida Deceptive and Unfair Trade Practices Act,  
Florida Statutes §§501.201, *et seq.*,  
On Behalf of Plaintiff and the Class**

72. Plaintiff realleges and incorporates by reference the allegations contained in the above referenced paragraphs as if fully set forth herein.

73. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.* (the “Act”). The stated purpose of the Act is to “protect the consuming public . . . from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. §501.202(2).

74. Plaintiff is a consumer as defined by Fla. Stat. §501.203. Pompeian Brand, Bertolli Brand, and Filippo Berio Brand are goods within the meaning of the Act.

75. Defendants are engaged in trade or commerce within the meaning of the Act.

76. Fla. Stat. §501.204(1) declares unlawful “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”

77. Fla. Stat. §501.204(2) states that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.” Defendants’ unfair and deceptive practices are likely to deceive – and have deceived – the consumer acting reasonably in the circumstances, and violate Fla. Stat. §500.04 and 21 U.S.C. §343. Further, FTC rules and regulations require that Defendants have the same level of substantiation for its advertisements at the time they are made as it claimed in the advertisement. Defendants’ claims lack reliable and competent proof.

78. Defendants have violated the Act by engaging in the unfair and deceptive practices as described herein which offend public policies and are immoral, unethical, unscrupulous and substantially injurious to consumers.

79. Plaintiff and the Class have been aggrieved by Defendants' unfair and deceptive practices in that they paid for Pompeian Brand, Bertolli Brand, and Filippo Berio Brand and did not receive the benefit of their bargains.

80. The damages suffered by Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unfair practices of Defendants, as more fully described herein.

81. Pursuant to Fla. Stat. §501.211(1), Plaintiff and the Class seek a declaratory judgment and court order enjoining the above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

82. Additionally, pursuant to Fla. Stat. §§501.211(2) and 501.2105, Plaintiff and the Class make claims for damages, attorneys' fees and costs.

## **COUNT II**

### **Breach of Express Warranty On Behalf of Plaintiff and the Class**

83. Plaintiff realleges and incorporate by reference the allegations contained in all preceding paragraphs, except for the paragraphs of Count I, which are not incorporated by reference, as if fully set forth herein.

84. Plaintiff, and each member of the Class, formed a contract with Defendants at the time Plaintiff and the other members of the Class purchased Pompeian Brand, Bertolli Brand, and Filippo Berio Brand. The terms of that contract include the promises and affirmations of fact made by Defendants on their product labels and through its marketing campaign, as

described above. This product labeling and advertising constitutes express warranties, became part of the basis of the bargain, and is part of a standardized contract between Plaintiff and the members of the Class on the one hand, and Defendants on the other.

85. All conditions precedent to Defendants' liability under this contract, including notice, have been performed by Plaintiff and the Class.

86. Defendants breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing the products as advertised and described above.

87. As a result of Defendants' breach of its contract and warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Pompeian Brand, Bertolli Brand, and Filippo Berio Brand they purchased.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for a judgment:

A. Certifying the Class as requested herein, and appointing Plaintiff and Class Representative and Plaintiff's counsel as Class Counsel;

B. Awarding Plaintiff and the proposed Class members damages;

C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the proposed Class members;

D. Awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its conduct and pay them restitution and disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;

E. Ordering Defendants to engage in a corrective advertising campaign;

F. Awarding attorneys' fees and costs; and

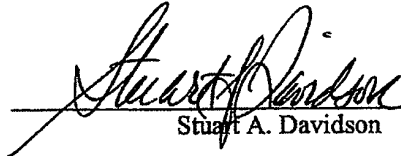
G. Providing such further relief as may be just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

DATED: August 13, 2010

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# EXHIBIT B

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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange

08/02/2018 at 09:24:37 AM

Clerk of the Superior Court  
By Maart H Nordman, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

DAVID W. MARTIN, an individual;  
ANTONELLO RISTORANTE, INC. dba  
ANTONELLO'S RISTORANTE, a California  
Corporation; FAYE LEFURGEY, an  
individual, DOLORES OTTING, an individual;  
and THOMAS WISH, an individual;  
MICHAEL D. OWINGS, an individual; 3  
DINKS, INC., a California Corporation; on  
their own behalf and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

CARAPPELLI USA, LLC, a Minnesota  
Corporation; ACH FOOD COMPANIES, INC.,  
an Illinois Corporation and an indirect  
wholly-owned subsidiary of ASSOCIATED  
BRITISH FOODS; BARIANI OLIVE OIL,  
LLC, a California Corporation; BORGES  
USA, INC., a California Corporation;  
COLAVITA USA, a New Jersey Corporation;  
GEMSA ENTERPRISES, LLC a California  
Corporation; G.L. MEZZETTA, INC., a  
California Corporation; POMPEIAN, INC., a  
Maryland Corporation; RACHAEL RAY  
DIGITAL LLC, a Maryland Corporation;  
SAFEWAY, INC. dba SAFEWAY SELECT, a  
Delaware Corporation; SALOV NORTH  
AMERICA CORPORATION, a New Jersey  
Corporation; UNILEVER UNITED STATES,  
INC., a Delaware Corporation and a subsidiary  
of UNUS HOLDING B.V. which is an  
indirectly wholly owned subsidiary of

**CASE NO. 30-2010-00395464-CU-FR-CXC**

Judge: Judge Nancy Wieben Stock  
Dept:

**CLASS ACTION COMPLAINT FOR:**

- (1) **FRAUD;**
- (2) **NEGLIGENT**
- MISREPRESENTATION;**
- (3) **BREACH OF WARRANTY;**
- (4) **FALSE ADVERTISING UNDER**  
**CALIFORNIA BUSINESS &**  
**PROFESSIONS CODE SECTION**  
**17500;**
- (5) **FALSE ADVERTISING UNDER**  
**CALIFORNIA BUSINESS &**  
**PROFESSIONS CODE SECTION**  
**17200; AND**
- (6) **UNJUST ENRICHMENT**

**JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

1 UNILEVER N.V. and UNILEVER PLC.;  
 2 ALBERTSON'S, LLC., a California  
 3 Corporation; GELSON'S MARKETS a wholly  
 4 owned subsidiary of ARDEN-MAYFAIR, INC.  
 5 a wholly owned subsidiary of ARDEN  
 6 GROUP, INC., California Corporations;  
 7 RALEY'S dba NOB HILL FOODS, a  
 8 California Corporation; BRISTOL FARMS, a  
 9 California Corporation; K MART  
 10 CORPORATION, a Michigan Corporation;  
 11 THE KROGER CO. dba RALPHS, an Ohio  
 12 Corporation; RESTAURANT DEPOT, LLC, a  
 13 Delaware Corporation; SAFEWAY, INC. dba  
 14 VONS and PAVILIONS, a Delaware  
 15 Corporation; STATER BROS. MARKETS, a  
 16 California Corporation; SYSCO FOODS  
 17 SERVICES OF LOS ANGELES, INC. a  
 18 subsidiary of SYSCO CORPORATION, a  
 19 Delaware Corporation; TARGET  
 20 CORPORATION, a Minnesota Corporation;  
 21 WAL-MART STORES, INC., an Arkansas  
 22 Corporation; and DOES 1 through 1000,  
 23 inclusive,

24 Defendants.

25 Plaintiffs (collectively "Plaintiffs") on their own behalf and on behalf of all others  
 26 similarly situated, allege:

# I.

## INTRODUCTION

27 The Defendants, olive oil manufacturers, distributors and retailers who sell their  
 28 product in the State of California, have been misleading and defrauding California consumers for  
 29 years. Defendants have been claiming the olive oil they sell meets the high standard of "extra virgin"  
 30 classification, thus, entitling Defendants to charge a hefty premium for the product, when in fact the  
 31 product does not meet that standard and is of inferior quality. Consumers spend an amazing \$700  
 32 million dollars a year on this product not realizing the products purchased from these Defendants,  
 33 which represent the vast majority of olive oil manufacturers, distributors and retailers who sell their  
 34 product in California, are not worthy of their premium prices.

1 II.

2 **FACTUAL ALLEGATIONS**

3 1. For years, chefs and home cooks have shared anecdotal tales of extra virgin  
4 olive oil that just did not taste right. It has now become clear that these tales were based in fact. Upon  
5 information and belief, Defendants and others have been defrauding consumers by claiming the olive  
6 oil they are manufacturing, distributing and/or selling is of sufficient quality to call the product extra-  
7 virgin olive oil when in fact it is not. In addition, the Defendants do not insure that the product, whose  
8 quality can deteriorate with time and sun exposure and become rancid, is sold to the consumer at a  
9 level that still constitutes the product having the quality worthy of the classification of extra virgin.

10 2. In reality, the Defendants' products do not warrant the high standard of "extra  
11 virgin" and, therefore, are not worthy of the premium price charged for extra virgin olive oil by the  
12 Defendants. With respect to all of the Defendants, the deceptive statements are printed clearly on the  
13 front of every one of their bottles of extra virgin olive oil.

14 3. A June 2010 study, performed by the prominent University of California at  
15 Davis' Olive Oil Center, whose report is entitled "*Tests indicate that imported 'extra virgin' olive oil*  
16 *often fails international and USDA standards,*" confirmed to the world the extent of this industry wide  
17 deception carried out against California consumers.

18 4. The UC Davis Report noted that the "UC Davis Olive Oil Chemistry Laboratory  
19 collaborated with the Australian Oils Research Laboratory to evaluate the quality of extra virgin olive  
20 oils sold on retail shelves in California." The "two laboratories evaluated the oils based on standards  
21 and testing methods established by the International Olive Council (IOC) and United States  
22 Department of Agriculture (USDA), as well as several newer standards and testing methods adopted in  
23 Germany and Australia."

24 5. The results of the tests were shocking. The tests found that the "samples of  
25 imported olive oil labeled as 'extra virgin,' and sold at retail locations in California, often did not meet  
26 international and US standards. Sensory tests showed that these failed samples had defective flavors  
27  
28

1 such as rancid, fusty, and musty. Negative sensory results were confirmed by chemical data in 86  
2 percent of the cases.”<sup>1</sup>

3 6. The UC Davis Report went on to note that the “samples failed extra virgin  
4 standards for reasons that include one or more of the following:

- 5 • oxidation by exposure to elevated temperatures, light, and/or aging;
- 6 • adulteration with cheaper refined olive oil;
- 7 • poor quality oil made from damaged and overripe olives, processing
- 8 flaws, and/or improper oil storage.”

9 7. The report concluded that *“that samples of imported olive oil labeled as ‘extra*  
10 *virgin’ and sold at retail locations in California often did not meet international and US*  
11 *standards.”* Thus, California consumers, including the Plaintiffs identified herein, are being sold a  
12 low quality product for the price of what one would expect to pay for a much higher quality product,  
13 which results in an outrageous unjust enrichment to the benefit of the Defendants.

14 8. The issues in this action were highlighted in a July 15, 2010 Los Angeles Times  
15 article entitled *“UC Davis researchers report that most common brands sold in California are*  
16 *mislabeled, which can cost consumers money and worse,”* which noted:

17 Extra-virgin oil is marketed as a premium consumer product. At a  
18 Pavilions grocery store in Seal Beach, a 750-milliliter bottle of Bertolli’s  
19 extra-virgin olive oil cost \$14.29, while the same-size bottle of Bertolli’s  
extra-light olive oil cost \$7.99. (The store was not part of the report  
released Wednesday afternoon.)

20 The report underscores problems in an industry dominated by overseas  
21 importers and which has consumers slurping up more than \$700 million  
22 of the stuff a year. The results were a combined effort of research  
23 conducted by scientists at UC Davis and at the Australian Oils Research  
Laboratory, a governmental research center accredited by the  
International Olive Council in Madrid, whose product standards the new  
U.S. Department of Agriculture rules are generally based upon.<sup>2</sup>

24  
25  
26 <sup>1</sup> Fusty is defined as stale and unclean smelling and musty is defined as smelling damp.

27 <sup>2</sup> Los Angeles Times article entitled *“UC Davis researchers report that most common brands sold in*  
28 *California are mislabeled, which can cost consumers money and worse,”* by P.J. Huffstutter and  
Kristena Hansen dated July 15, 2010.

9. Though Defendants' olive oil does not meet the standard of extra virgin, the Defendants still manufacture, market and distribute their product with advertising and labeling that represents the product to be of extra virgin quality.

10. By making these false claims, Defendants have convinced unwary consumers to pay an outrageous price for what is, at best, a product worth much less than that of the value for which it is sold, as evidenced by the cited Los Angeles Times article which shows the so-called "extra virgin" olive oil being sold for almost 80% more than it is worth.

11. Though the Defendants' olive oils do not meet the standards for being "extra virgin," Defendants nevertheless promote and price their product as such to unwitting customers. This results in an extreme unjust enrichment on the part of this Defendants. Accordingly, Plaintiffs bring this lawsuit – primarily to enjoin this fraud, and secondarily to recover the millions of dollars taken from Californians by the nefarious and deceptive practices of these Defendants.

12. Each of the Plaintiffs have purchased olive oil products within the State of California from the Defendants, though not all from the same Defendant, based on their belief that the product(s) met the standard of being called "extra virgin" and, therefore, warranting the premium price of the product. None of the Plaintiffs would have purchased any of these products if they knew the quality level of the product was not that of extra virgin.

### III.

## VENUE

13. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution.

14. Venue as to each Defendant is proper in this judicial district, pursuant to California Code of Civil Procedure Section 395.5. Many of the wrongful and unlawful acts and omissions of Defendants, which are described throughout, were committed by Defendants in the County of Orange, State of California. In addition, Orange County is the county where the principal place of business of a Defendant; thus, making Orange County the proper venue for this action.

## IV.

PARTIESA. Plaintiffs

15. Plaintiff DAVID W. MARTIN, is one of the most recognized chef's from Bravo TV's *"Top Chef"* Season One. He is a former resident of California and a current resident of New York, New York, and still regularly works as a chef in California, who purchases and used what he had been led to believe was extra virgin olive oil from the Defendants.

16. Plaintiff ANTONELLO RISTORANTE, INC. dba ANTONELLO'S RISTORANTE, a California corporation, operates one of the finest Italian Restaurants in California, which purchases and used what it had been led to believe was extra virgin olive oil from the Defendants.

17. Plaintiff FAYE LEFURGEY is a California citizen who purchases and used what it had been led to believe was extra virgin olive oil from the Defendants.

18. Plaintiff DOLORES OTTING is a California citizen who purchases and used what it had been led to believe was extra virgin olive oil from the Defendants.

19. Plaintiff THOMAS WISH is a California citizen who purchases and used what it had been led to believe was extra virgin olive oil from the Defendants.

20. Plaintiff MICHAEL D. OWINGS, a well recognized American chef and well known restaurateur who lives in the Palm Springs area of California and is Culinary Director of Dink's Restaurant and Ultra Lounge, who purchases and uses what he had been led to believe was extra virgin olive oil from the Defendants.

21. Plaintiff 3 DINKS, INC., a California corporation, which owns Dink's Restaurant and Ultra Lounge, a gourmet restaurant in Palm Springs, California, which purchases and uses what it had been led to believe was extra virgin olive oil from the Defendants.

22. Plaintiffs, and each of them, will adequately represent the interests of the Class and will vigorously participate in this matter as a class action when certified. Plaintiffs' class representatives have secured counsel experienced in class action litigation who will likewise adequately represent the class.



1        **B.     Defendants.**

2                23.     Defendant CARAPELLI USA, LLC, an olive oil manufacturer, who, upon  
3 information and belief, is a corporation incorporated in the State of Minnesota and doing business  
4 throughout the United States and specifically the State of California which owns, advertises, and  
5 distributes olive oil under the brand name CARAPELLI.

6                24.     Defendant ACH FOOD COMPANIES, INC, is an olive oil manufacturer, who  
7 is an indirect wholly-owned subsidiary of ASSOCIATED BRITISH FOODS, which upon information  
8 and belief, is a corporation incorporated in the State of Illinois and doing business throughout the  
9 United States and specifically the State of California which owns, advertises, and distributes olive oil  
10 under the brand name MAZOLLA.

11              25.     Defendant BARIANI OLIVE OIL, LLC, is an olive oil manufacturer, who, upon  
12 information and belief, is a corporation incorporated in the State of California and doing business  
13 throughout the United States and specifically the State of California which owns, advertises, and  
14 distributes olive oil under the brand name BARIANI.

15              26.     Defendant BORGES USA, INC., is an olive oil manufacturer, who, upon  
16 information and belief, is a corporation incorporated in the State of California and doing business  
17 throughout the United States and specifically the State of California which owns, advertises, and  
18 distributes olive oil under the brand name STAR.

19              27.     Defendant COLAVITA USA, is an olive oil manufacturer, who, upon  
20 information and belief, is a corporation incorporated in the State of New Jersey and doing business  
21 throughout the United States and specifically the State of California which owns, advertises, and  
22 distributes olive oil under the brand name COLAVITA.

23              28.     Defendant GEMSA ENTERPRISES, LLC is an olive oil manufacturer, who,  
24 upon information and belief, is a corporation incorporated in the State of California with its principal  
25 place of business in the City of Orange, Orange County, California, and doing business throughout the  
26 United States and specifically the State of California which owns, advertises, and distributes olive oil,  
27 and, upon information and belief, it manufactures olive oil for many other entities, whose identities  
28 will be determined during discovery.



1           29. Defendant G.L. MEZZETTA, INC., is an olive oil manufacturer, who, upon  
2 information and belief, is a corporation incorporated in the State of California and doing business  
3 throughout the United States and specifically the State of California which owns, advertises, and  
4 distributes olive oil under the brand name MEZZETTA.

5           30. Defendant POMPEIAN, INC., is an olive oil manufacturer, who, upon  
6 information and belief, is a corporation incorporated in the State of Maryland and doing business  
7 throughout the United States and specifically the State of California which owns, advertises, and  
8 distributes olive oil under the brand name POMPEIAN.

9           31. Defendant RACHAEL RAY DIGITAL LLC, is an olive oil manufacturer, who,  
10 upon information and belief, is a corporation incorporated in the State of Maryland and doing business  
11 throughout the United States and specifically the State of California which owns, advertises, and  
12 distributes olive oil under the brand name RACHAEL RAY.

13           32. Defendant SAFEWAY, INC., is an olive oil manufacturer, who, upon  
14 information and belief, is a corporation incorporated in the State of Delaware and doing business  
15 throughout the United States and specifically the State of California which owns, advertises, and  
16 distributes olive oil under the brand name SAFEWAY SELECT.

17           33. Defendant SALOV NORTH AMERICA CORPORATION, is an olive oil  
18 manufacturer, who, upon information and belief, is a corporation incorporated in the State of New  
19 Jersey and doing business throughout the United States and specifically the State of California which  
20 owns, advertises, and distributes olive oil under the brand name FILIPPO BERIO.

21           34. Defendant UNILEVER UNITED STATES, INC., is an olive oil manufacturer,  
22 who, upon information and belief, is a corporation that is a wholly owned subsidiary of UNUS  
23 HOLDING B.V. which is an indirectly wholly owned subsidiary of UNILEVER N.V. and UNILEVER  
24 PLC., and is, upon information and belief, incorporated in the State of Delaware and doing business  
25 throughout the United States and specifically the State of California which owns, advertises, and  
26 distributes the olive oil under the brand name BERTOLLI.

27           35. Defendant ALBERTSON'S, LLC., is an olive oil retailer, who, upon  
28 information and belief, is a Delaware corporation and doing business throughout the United States

1 and specifically the State of California, who upon information and belief, advertises, markets, sells and  
 2 distributes olive oil to individual consumers and institutional consumers such as restaurants.

3 36. Defendant GELSON'S MARKETS a wholly owned subsidiary of  
 4 ARDEN-MAYFAIR, INC., a wholly owned subsidiary of ARDEN GROUP, INC., an olive oil retailer,  
 5 who, upon information and belief, is a California corporation, who upon information and belief,  
 6 advertises, markets, sells and distributes olive oil to individual consumers and institutional consumers  
 7 such as restaurants.

8 37. Defendant RALEY'S dba NOB HILL FOODS, is an olive oil retailer, who,  
 9 upon information and belief, is a California corporation, who upon information and belief, advertises,  
 10 markets, sells and distributes olive oil to individual consumers and institutional consumers such as  
 11 restaurants.

12 38. Defendant BRISTOL FARMS, is an olive oil retailer, who, upon information  
 13 and belief, is a California corporation, who upon information and belief, advertises, markets, sells and  
 14 distributes olive oil to individual consumers and institutional consumers such as restaurants.

15 39. Defendant K MART CORPORATION, is an olive oil retailer, who, upon  
 16 information and belief, is a Michigan corporation and doing business throughout the United States and  
 17 specifically the State of California, who upon information and belief, advertises, markets, sells and  
 18 distributes olive oil to individual consumers and institutional consumers such as restaurants.

19 40. Defendant THE KROGER CO. dba RALPHS, is an olive oil retailer, who, upon  
 20 information and belief, is an Ohio corporation and doing business throughout the United States and  
 21 specifically the State of California, who upon information and belief, advertises, markets, sells and  
 22 distributes olive oil to individual consumers and institutional consumers such as restaurants.

23 41. Defendant RESTAURANT DEPOT, LLC, is an olive oil retailer, who, upon  
 24 information and belief, is a Delaware corporation doing business throughout the United States and  
 25 specifically the State of California, who upon information and belief, advertises, markets, sells and  
 26 distributes olive oil to institutional consumers such as restaurants.

27 42. Defendant SAFEWAY, INC. dba VONS and PAVILIONS, is an olive oil  
 28 retailer, who, upon information and belief, is a Delaware corporation and doing business throughout

1 the United States and specifically the State of California, who upon information and belief, advertises,  
 2 markets, sells and distributes olive oil to individual consumers and institutional consumers such as  
 3 restaurants.

4 43. Defendant STATER BROS. MARKETS, is an olive oil retailer, who, upon  
 5 information and belief, is a California corporation, who upon information and belief, advertises,  
 6 markets, sells and distributes olive oil to individual consumers and institutional consumers such as  
 7 restaurants.

8 44. Defendant SYSCO FOODS SERVICES OF LOS ANGELES, INC., is an olive  
 9 oil retailer, who, upon information and belief, is a Delaware corporation, which is, upon in formation  
 10 and belief, a subsidiary of SYSCO CORPORATION a Delaware Corporation and doing business  
 11 throughout the United States and specifically the State of California, who upon information and belief,  
 12 advertises, markets, sells and distributes olive oil to individual consumers and institutional consumers  
 13 such as restaurants.

14 45. Defendant TARGET CORPORATION, is an olive oil retailer, who, upon  
 15 information and belief, is a Minnesota corporation and doing business throughout the United States  
 16 and specifically the State of California, who upon information and belief, advertises, markets, sells and  
 17 distributes olive oil to individual consumers and institutional consumers such as restaurants.

18 46. Defendant WAL-MART STORES, INC., is an olive oil retailer, who, upon  
 19 information and belief, is an Arkansas corporation and doing business throughout the United States  
 20 and specifically the State of California, who upon information and belief, advertises, markets, sells and  
 21 distributes olive oil to individual consumers and institutional consumers such as restaurants.

22 47. The true names and capacities, whether individual, corporate, associate, or  
 23 otherwise, of Defendants sued herein as Does 1 through 1,000, inclusive, are currently unknown to  
 24 Plaintiffs who therefore sue said Defendants by such fictitious names under Code of Civil Procedure  
 25 §474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants  
 26 designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to  
 27 herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and  
 28 capacities of the Defendants designated as Does when such entities become known.

48. Plaintiffs are informed and believe and upon such information and belief allege that at all times herein mentioned, that each named Defendant, and Defendant DOES 1 through 1,000, inclusive, and each of them, were the agents, servants, employees and assistants of each remaining Defendants, and in doing the things alleged in this Complaint, were acting within the course, scope, purpose and authority of said agency and employment and that each Defendant ratified the conduct of every other Defendant.

Y.

### CLASS ACTION ALLEGATIONS

49. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to Section 382 of the Code of Civil Procedure.

50. Plaintiffs bring this class action for damages and other monetary relief on behalf of the following class:

All persons and entities located within California who purchased extra virgin olive oil from Defendants at any time during the four years preceding the filing of this Complaint (the "Class").

51. Excluded from the Class are governmental entities, Defendants, any entity in which defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer, presiding over this matter and the members of their immediate families and judicial staff.

52. NUMEROSITY: The proposed Class is so numerous that individual joinder of all its members is impracticable. Due to the nature of the trade and commerce involved, however, Plaintiffs believe that the total number of Class members is at least in the hundreds of thousands and members of the Class are numerous and geographically dispersed across California. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

1           53.    COMMONALITY: There is a well-defined community of interest in the  
 2 questions of law and fact involved affecting the class and these common questions predominate over  
 3 any questions that may affect individual Class members. Common questions of fact and law include,  
 4 but are not limited to, the following:

- 5                   a.    Are Defendants' claims as to the quality of the olive oil they are selling,  
 6 specifically that it meets the standard of being extra virgin false?
- 7                   b.    Are Defendants' claims as to the quality of the olive oil they are selling,  
 8 specifically that it meets the standard of being extra virgin misleading?
- 9                   c.    Do Defendants have adequate substantiation to support their claims that  
 10 quality of the olive oil they are selling--- specifically that their oils meets  
 11 the standard of being extra virgin?
- 12                  d.    When and to what extent did Defendants know that the claims they were  
 13 making about the quality of their olive oil were false and/or misleading?

14           54.    TYPICALITY: Plaintiff's claims are typical of the claims of the members of  
 15 the Class. Plaintiffs and all members of the Class have been similarly affected by Defendants'  
 16 common course of conduct since they all purchased olive oil for use in cooking after Defendants made  
 17 the quality claims regarding their olive oils.

18           55.    ADEQUACY: Plaintiffs will fairly and adequately represent and protect the  
 19 interests of the members of the Class. Plaintiffs have no interests adverse to the interests of the other  
 20 Class Members. Plaintiffs have retained counsel with substantial experience in handling complex  
 21 class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action  
 22 on behalf of the Class. Plaintiffs have retained an attorney that is widely recognized as one of the  
 23 most successful and effective class action litigators in California. Proposed class counsel, Callahan &  
 24 Blaine, is competent and experienced in litigation including consumer claims.

25           56.    SUPERIORITY: A class action is superior to other available methods for the  
 26 fair and efficient adjudication of the present controversy. Individual joinder of all members of the  
 27 class is impracticable. Even if individual class members had the resources to pursue individual  
 28 litigation, it would be unduly burdensome to the courts in which the individual litigation would

1 proceed. Individual litigation magnifies the delay and expense to all parties in the court system of  
 2 resolving the controversies engendered by Defendants' common course of conduct. The class action  
 3 device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the  
 4 fair and efficient handling of all class members' claims in a single forum. The conduct of this action  
 5 as a class action conserves the resources of the parties and of the judicial system and protects the rights  
 6 of the class members. Furthermore, for many, if not most, a class action is the only feasible  
 7 mechanism that allows an opportunity for legal redress and justice. Adjudication of individual class  
 8 members' claims with respect to the Defendants would, as a practical matter, be dispositive of the  
 9 interests of other members not parties to the adjudication, and could substantially impair or impede the  
 10 ability of other class members to protect their interests.

11           57. Plaintiffs reserve the right under 3.760 et seq. of the California Rules of Court,  
 12 to amend or modify the class description by making it more specific or dividing the class members  
 13 into subclasses or limiting the issues.

14           58. This action has been brought and may properly be maintained as a class action  
 15 under the provisions of Section 382 of the California Code of Civil Procedure because there is a well-  
 16 defined community of interest in the litigation and the proposed class is easily ascertainable.

## 17 VI.

### 18 CAUSES OF ACTION

#### 19 FIRST CAUSE OF ACTION

20 (Fraud)

21 (Against All Defendants)

22           59. Plaintiffs incorporate by reference Paragraphs 1 through 59 above as though  
 23 fully set forth herein.

24           60. Defendants have affirmed as a fact, promised, and described their product as  
 25 being of the quality of "extra virgin" olive oil. These descriptions, affirmations of fact, quality and/or  
 26 promises are false and were known false when made, and constitute fraud.  
 27  
 28



1           61. The elements of common law fraud are a misrepresentation, knowledge of its  
 2 falsity, intent to defraud, justifiable reliance, and resulting damage. Gil v. Bank of America, NA  
 3 (2006) 138 Cal. App.4th 1371, 1381. Section 1572 of the California Civil Code further defines fraud  
 4 to include (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be  
 5 true; (2) the positive assertion, in a manner not warranted by the information of the person making it,  
 6 of that which is not true, though he believes it to be true; (3) the suppression of that which is true, by  
 7 one having knowledge or belief of the fact; (4) a promise made without any intention of performing it;  
 8 or (5) any other act fitted to deceive.

9           62. Plaintiffs suffered damages due to Defendants' material, false, and fraudulent  
 10 misrepresentations that their products meet the high standard of "extra virgin" classification, which  
 11 were intended to deceive consumers into buying their product. Plaintiffs intended to pay a premium  
 12 for "extra virgin" olive oil and were deliberately led to believe that the products they were purchasing  
 13 meet the high standard of "extra virgin" classification.

14           63. Defendants were fully aware that their product did not meet the high standard of  
 15 "extra virgin" classification when they fraudulently named and marketed their product and misled the  
 16 public, including the Plaintiffs.

17           64. Defendants know and have known for some time that their product did not meet  
 18 the high standard of "extra virgin" classification, yet they willfully have continued to sell, market and  
 19 advertise it as such. Defendants boldly place labels on their products indicating the contents contain  
 20 "Extra Virgin Olive Oil" when they know that claim to be false.

21           65. Plaintiffs justifiably relied on Defendants' fraudulent description of their  
 22 product when they purchased the products. All consumers naturally rely on the name and label of a  
 23 product to determine what they are buying. If an olive oil product is held to meet the high standard of  
 24 "extra virgin," consumers reasonably believe that is what they are buying and that it is a product that  
 25 comes with a premium price. Plaintiffs did rely on these statements. Plaintiffs reliance was  
 26 reasonable on its face, particularly given the appearance and labeling of the product, as well as  
 27 Defendants' prominent marketing of the product.  
 28

67. Plaintiffs further seek an award of punitive damages appropriate to deter, punish, and make an example of Defendants. Defendants intentionally pursued and continue to pursue the herein-alleged fraudulent course of action designed to make money at the expense of consumers. They did so knowing it was misleading. Such conduct is reprehensible, and is malicious, oppressive, and fraudulent within the meaning of California Civil Code Section 3294.

## SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

(Against All Defendants)

68. Plaintiffs incorporate by reference Paragraphs 1 through 67 above as though fully set forth herein.

69. Defendants have affirmed as a fact promised, described, marketed, and sold their product as meeting the high standard of "extra virgin" classification. If not deliberately fraudulent, and in the alternative to that theory, these descriptions, affirmations of fact, and/or promises, if not intentional and fraudulent constitute negligent misrepresentations.

70. Defendants made these false statements without reasonable grounds for believing them to be true.

71. Plaintiffs relied on Defendants' misstatements of fact when they purchased Defendants' inferior product.

72. Plaintiffs were damaged in that they were deceived into buying a product that they believed was something that it was not and a product that was worth less and was inferior in its quality to the product promised by the Defendants.





specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

79. Defendants breached their warranties with respect to their product because, as alleged above, their products do not meet the high standard of "extra virgin" classification

80. Plaintiffs have been damaged as a result of Defendants' breaches of their express warranty obligations in an amount to be determined at trial in that.

#### **FOURTH CAUSE OF ACTION**

(False Advertising Under California Business & Professions Code Section 17500)

(Against All Defendants)

81. Plaintiffs incorporate by reference Paragraphs 1 through 80 above as though fully set forth herein.

82. Defendants knew or in the exercise of reasonable care should have known that their publicly disseminated statements and omissions relating to the quality of the olive oil they were selling was false and/or misleading. Defendants' false advertising packaging, advertising, statements and omissions injure and injured Plaintiffs. Defendants' false and misleading packaging, advertising, and statements include, among others, that Defendants' product is classified as extra virgin when it does not qualify as extra virgin olive oil.

83. By making such untrue or misleading statements, Defendants have engaged in false advertising in violation of the statutory law of the state of California, California Business & Professions Code Section 17500, et seq.

84. By reason of Defendants' conduct, Plaintiffs have suffered injury in fact and have lost money or property.

85. Defendants have caused, and will continue to cause, immediate and irreparable injury to Plaintiffs, for which there is no adequate remedy at law. Plaintiffs are entitled to an injunction restraining Defendants, their agents, employees, representatives and all persons acting in concert with them from engaging in further such acts, and forbidding Defendants from advertising and

1 marketing their products as being of extra virgin quality and from making other false and/or  
2 misleading statements in connection with their products.

3 86. Plaintiffs are further entitled to a restitutionary recovery from Defendants.

4  
5 **FIFTH CAUSE OF ACTION**

6 (False Advertising Under California Business & Professions Code Section 17200)

7 (Against All Defendants)

8 87. Plaintiffs incorporate by reference Paragraphs 1 through 86 above as though  
9 fully set forth herein.

10 88. Defendants have made, published, disseminated, and circulated false, deceptive,  
11 and misleading statements, representations, and advertisements in California misrepresenting the  
12 nature, quality, and characteristics of their olive oil with the intent of selling, distributing, and  
13 increasing the consumption of, and interest in, their product rather than in the products that actually  
14 qualify to be called extra virgin olive oil.

15 89. Plaintiffs have standing to pursue their claims as they have suffered injury in  
16 fact and have lost money as a result of Defendants' false advertising and unfair business  
17 practices. Specifically, prior to the filing of this action, Plaintiffs purchased olive oil from these  
18 manufacturers, distributors and retailers for their use in cooking. In so doing, they relied upon the  
19 false representations referenced above.

20 90. Defendants' actions as alleged in this complaint constitute an unfair or  
21 deceptive business practice within the meaning of California Business and Professions Code Section  
22 17200 in that Defendants' actions are unfair, unlawful, and misleading, and because the advertising  
23 statements are false and misleading within the meaning of California Business and Professions Code  
24 Sections 17500, et seq.

25 91. Plaintiffs seek all remedies available under Section 17200 of the California  
26 Business and Professions Code, including restitutionary and injunctive relief, as well as  
27 attorneys' fees and costs.  
28



102. Retention by Defendants of monies received by virtue of their causing their improperly classified olive oil to be sold at a higher value than it deserved violates the principles of equity and good conscience.

VII.

PRAYER FOR DAMAGES

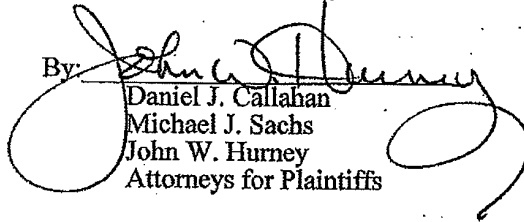
WHEREFORE, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

1. Certification of the proposed classes and notice thereto to be paid by Defendants;
2. Adjudge and decree that Defendants have engaged in the conduct alleged herein;
3. For all legal and equitable remedies available under the Unfair Business Practices Act;
4. For punitive damages against Defendants in an amount sufficient to punish and set an example of Defendants;
5. For an accounting by Defendants for any and all profits derived by Defendants from the sale of their product;
6. That Plaintiffs be awarded Defendants' profits obtained by Defendants as a consequence of Defendants' conduct;
7. For any and all other legal and equitable remedies that may be available, including damages, disgorgement of profits, statutory penalties, attorneys' fees, costs, and pre-judgment and post-judgment interest; and
8. For such other relief as the Court deems just and proper.

Dated: August 2, 2010

CALLAHAN & BLAINE, APLC

By:

  
Daniel J. Callahan  
Michael J. Sachs  
John W. Hurney  
Attorneys for Plaintiffs

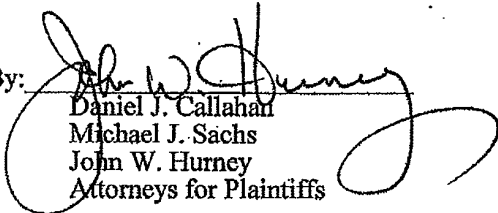
**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial by jury of all factual issues arising hereunder.

Dated: August 2, 2010

CALLAHAN & BLAINE, APLC

By:

  
Daniel J. Callahan  
Michael J. Sachs  
John W. Hurney  
Attorneys for Plaintiffs

G:\3096\3096-02\PLD\Complaint.wpd

# EXHIBIT C

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Michael J. Sachs (SBN 134468)</b> <b>CALLAHAN &amp; BLAINE, APLC</b> <b>3 Hutton Centre Drive, Ninth Floor</b> <b>Santa Ana, CA 92707</b>		FOR COURT USE ONLY: <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER  DEC - 9 2010 <i>me</i>  ALAN CARLSON, Clerk of the Court <i>M. Correa</i>
TELEPHONE NO.: (714) 241-4444 FAX NO. (Optional): (714) 241-4445 E-MAIL ADDRESS (Optional): michael@callahan-law.com ATTORNEY FOR (Name): Plaintiffs		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 751 West Santa Ana Boulevard MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Civil Complex Center		ELECTRONICALLY RECEIVED BY M. CORREA Superior Court of California, County of Orange 12/08/2010 at 10:25:23 AM Clerk of the Superior Court By Margaret M Demaria, Deputy Clerk
PLAINTIFF/PETITIONER: DAVID W. MARTIN, et al. DEFENDANT/RESPONDENT: CARAPELLI USA, LLC, et al.		
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Fraud, Negligent Misrepresentation		CASE NUMBER: 30-2010-00395464-CU-FR-CXC
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) ☐ With prejudice (2) ☒ Without prejudice
- b. (1) ☒ Complaint (2) ☐ Petition
- (3) ☐ Cross-complaint filed by (name):
- (4) ☐ Cross-complaint filed by (name):
- (5) ☐ Entire action of all parties and all causes of action
- (6) ☐ Other (specify):\*

Approved per 3.770.

on (date):

on (date):

## 2. (Complete in all cases except family law cases.)

- ☐ Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: December 7, 2010

Michael J. Sachs

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

*Michael J. Sachs*  
 (SIGNATURE)  
 Attorney or party without attorney for: David W. Martin,  
 et al.

☒ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross-complainant

## 3. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (j).

(SIGNATURE)  
 Attorney or party without attorney for:  
☐ Plaintiff/Petitioner ☐ Defendant/Respondent  
☐ Cross-complainant

(To be completed by clerk)

4. ☒ Dismissal entered as requested on (date): DEC 09 2010  
 5. ☐ Dismissal entered on (date): as to only (name):  
 6. ☐ Dismissal not entered as requested for the following reasons (specify):

7. a. ☐ Attorney or party without attorney notified on (date):  
 b. ☐ Attorney or party without attorney not notified. Filing party failed to provide  
☐ a copy to be conformed ☐ means to return conformed copy

Date: DEC 09 2010 ALAN CARLSON Clerk, by *Margaret M Demaria*, Deputy



77

# EXHIBIT D

CALLAHAN & BLAINE  
A Professional Law Corporation  
Daniel J. Callahan (Bar No. 91490)  
Michael J. Sachs (Bar No. 134468)  
3 Hutton Centre Drive, Ninth Floor  
Santa Ana, California 92707  
(714) 241-4444 / (714) 241-4445 [FAX]  
  
Attorneys for Plaintiffs

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**12/08/2010 at 10:25:00 AM**  
Clerk of the Superior Court  
By Margaret M Demaria, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF ORANGE, CIVIL COMPLEX CENTER**

DAVID W. MARTIN, an individual;  
ANTONELLO RISTORANTE, INC. dba  
ANTONELLO'S RISTORANTE, a California  
Corporation; FAYE LEFURGEY, an  
individual, DOLORES OTTING, an individual;  
and THOMAS WISH, an individual;  
MICHAEL D. OWINGS, an individual; 3  
DINKS, INC., a California Corporation; on  
their own behalf and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

CARAPPELLI USA, LLC, a Minnesota  
Corporation; ACH FOOD COMPANIES, INC.,  
an Illinois Corporation and an indirect  
wholly-owned subsidiary of ASSOCIATED  
BRITISH FOODS; BARIANI OLIVE OIL,  
LLC, a California Corporation; BORGES  
USA, INC., a California Corporation;  
COLAVITA USA, a New Jersey Corporation;  
GEMSA ENTERPRISES, LLC a California  
Corporation; G.L. MEZZETTA, INC., a  
California Corporation; POMPEIAN, INC., a  
Maryland Corporation; RACHAEL RAY  
DIGITAL LLC, a Maryland Corporation;  
SAFEWAY, INC. dba SAFEWAY SELECT, a  
Delaware Corporation; SALOV NORTH  
AMERICA CORPORATION, a New Jersey  
Corporation; UNILEVER UNITED STATES,  
INC., a Delaware Corporation and a subsidiary  
of UNUS HOLDING B.V. which is an  
indirectly wholly owned subsidiary of

Case No. 30-2010-00395464-CU-FR-CXC

Judge Nancy Wieben Stock  
Department CX105

**DECLARATION OF MICHAEL J. SACHS**  
**REQUESTING DISMISSAL OF CLASS**  
**ACTION**

[Filed Concurrently with Request for Dismissal  
without Prejudice]

Action Commenced on: August 2, 2010

1 UNILEVER N.V. and UNILEVER PLC.; )  
 2 ALBERTSON'S, LLC., a California )  
 Corporation; GELSON'S MARKETS a wholly )  
 3 owned subsidiary of ARDEN-MAYFAIR, INC. )  
 a wholly owned subsidiary of ARDEN )  
 4 GROUP, INC., California Corporations; )  
 RALEY'S dba NOB HILL FOODS, a )  
 5 California Corporation; BRISTOL FARMS, a )  
 California Corporation; K MART )  
 CORPORATION, a Michigan Corporation; )  
 6 THE KROGER CO. dba RALPHS, an Ohio )  
 Corporation; RESTAURANT DEPOT, LLC, a )  
 7 Delaware Corporation; SAFEWAY, INC. dba )  
 VONS and PAVILIONS, a Delaware )  
 8 Corporation; STATER BROS. MARKETS, a )  
 California Corporation; SYSCO FOODS )  
 9 SERVICES OF LOS ANGELES, INC. a )  
 subsidiary of SYSCO CORPORATION, a )  
 10 Delaware Corporation; TARGET )  
 CORPORATION, a Minnesota Corporation; )  
 11 WAL-MART STORES, INC., an Arkansas )  
 Corporation; and DOES 1 through 1000, )  
 12 inclusive, )

13 Defendants. )  
 14 )  
 15 )

16 I, Michael J. Sachs, declare and state as follows:

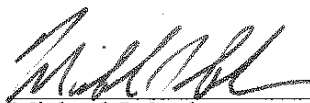
17 1. I am an attorney duly admitted to practice law before all the courts in the State of  
 18 California. I am a partner with the law firm of Callahan & Blaine, attorneys of record for Plaintiffs in  
 19 this matter.

20 2. Callahan & Blaine has had conducted exhaustive testing and analysis of the olive oil  
 21 products of the Defendants in the instant action to confirm that they support the allegations made in  
 22 the Complaint. Unfortunately, the results of the testing have been inconclusive and additional testing  
 23 and analysis is necessary in order to determine whether this action should be maintained against the  
 24 currently named Defendants.

25 3. At the last Status Conference in this matter, the Court ordered that the Complaint be  
 26 served by December 31, 2010. Because Plaintiffs will not have sufficient time within which to  
 27 conduct the necessary secondary testing, Plaintiffs respectfully request that the Court dismiss, without  
 28

1 prejudice, the current action so that it can be re-filed in the future, should the evidence support same.

2 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
3 true and correct. Executed this 7<sup>th</sup> day of December 2010, at Santa Ana, California.


4  
5   
6 Michael J. Sachs

7  
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9 G:\3096\3096-02\PLD\Dec MJS re dismissal.wpd  
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# EXHIBIT E

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# Doubts over olive oil are raised anew

 68°F, Mostly Cloudy

By P.J. Huffstutter • Los Angeles Times

**Published:** Thursday, April 14, 2011

**Updated:** Thursday, April 14, 2011 12:04

LOS ANGELES — Nearly three-quarters of popular brands of extra-virgin olive oil found in California grocery stores don't qualify as extra-virgin under international quality standards, according to a new study.

The report, released Wednesday by the University of California-Davis Olive Center and the Australian Oils Research Laboratory, is a follow-up to a similar study the two research centers conducted last summer. That earlier report said that two-thirds of common brands of extra-virgin olive oil found in California grocery stores aren't what they claim to be. Many of those problematic oils, labeled "extra-virgin," were imports that commanded premium prices, according to the researchers.

Wednesday's report, entitled "Evaluation of Extra-Virgin Olive Oil Sold in California," drew a larger group of samples from fewer brands. That was done in part to address some of the criticisms from foreign producers about the research methods used in last year's report. Ninety-nine percent of the olive oil consumed in the U.S. is imported.

The brands tested for the most recent report were Filippo Berio, Bertolli, Pompeian, Colavita and Star. The researchers also tested samples of Lucini, the top-selling premium Italian brand; Cobram Estate, the largest Australian olive oil producer; and California Olive Ranch, the leading U.S. producer.

California Olive Ranch, headquartered in Oroville, Calif., helped fund the research.

For the latest study, UC Davis researchers said they went to retailers in Northern, Central and Southern California in September and October and bought bottles labeled 100 percent extra-virgin olive oil from domestic and imported producers. They then subjected the oils to sensory and chemical tests.

According to the report, researchers found that 73 percent of the 134 samples from the eight producers failed the sensory, or taste and smell, tests established by the International Olive

Council, which is based in Madrid.

In addition, the report said, the imported and domestic samples were run through seven chemical laboratory tests. Seventy percent of the imports failed one particular test; 50 percent failed another test. Some of the samples failed five of the seven chemical laboratory tests.

Researchers said only 11 percent of the California-produced samples failed one test. The rest of those samples passed all of the chemical tests, as well as the sensory tests.

"This confirms what we found in the first report. Now, there are two reports and quite a bit of consistency," said Dan Flynn, executive director of the UC Davis Olive Center.

The International Olive Council, whose members account for 97 percent of the global production of olive oil, was less convinced. In a statement released Wednesday, the organization said both reports had "the same evident undercurrent of aggressive, inexplicable criticism of imported olive oil quality."

Industry officials generally agree that the "extra-virgin" designation is proper for oil that is cold-processed to prevent degradation of aromatic compounds and has higher levels of healthful fats and antioxidants. It also has relatively low acidity levels.

Purity is a serious concern for some consumers. Some state agencies previously have uncovered oils labeled 100 percent extra-virgin olive oil that were blended with cheaper canola, seed or nut oils — a significant health threat to people with allergies. No such mixing of seed oils was found in last year's tests or the recent tests of products sold in California, according to the report.

Money is also at stake, as extra-virgin oil is often sold as a premium-priced product.

Yet consistently replicating the researchers' findings has proved challenging to a California legal team that led a class-action lawsuit over the purity of imported olive oil.

Last August, a group of chefs, restaurants and others filed a complaint in Orange County Superior Court claiming that several retailers and olive oil producers had misled Californians about the quality of the olive oil they sold.

But plaintiff attorney Daniel J. Callahan said his firm ran into difficulties when it sent olive oil samples to various laboratories for testing: The results, he said, were inconsistent.

"There were good grades in Georgia, but bad in California," Callahan said Wednesday. "It wasn't consistent enough to meet the profile of the kind of case" his firm handles.

The class-action complaint was dropped last month, Callahan said.



# EXHIBIT F

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-61781-CIV-LENARD

BEVERLY MEYER, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

COLAVITA USA INC., and COLAVITA  
USA, L.L.C.,

Defendants.

---

**NOTICE OF RULE 45 SUBPOENA TO MICHAEL J. SACHS**

TO: ALL PARTIES AND THEIR ATTORNEY'S OF RECORD

Please take notice that, pursuant to Rule 34 and Rule 45 of the Federal Rules of Civil Procedure, Plaintiff will inspect and copy the documents identified in the Exhibit A, attached hereto, which are in the custody, possession or control of Michael J. Sachs at 9:30 a.m. on April 12, 2011 at the following location: Veritext Court Reporting, 550 S. Hope St., Suite 1775, Los Angeles, CA 90071.

You are invited to attend the production in accordance with the Federal Rules of Civil Procedure, or you may contact Plaintiff's counsel to obtain, at your expense, copies of the documents produced.

DATED: March 22, 2011

ROBBINS GELLER RUDMAN & DOWD LLP  
STUART A. DAVIDSON  
FLORIDA BAR NO. 084824  
CULLIN A. O'BRIEN  
FLORIDA BAR NO. 597341  
MARK J. DEARMAN  
FLORIDA BAR NO. 982407



CULLIN A. O'BRIEN

120 E. Palmetto Park Road, Suite 500  
Boca Raton, FL 33433  
Telephone: 561/750-3000  
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sdavidson@rgrdlaw.com  
cobrien@rgrdlaw.com  
mdearman@rgrdlaw.com

The Gerson Law Firm  
Steven Gerson  
8551 West Sunrise Blvd. Suite 300  
Plantation, FL 33317  
Telephone: 954/915-8888  
954/915-9191 (fax)  
sgerson@gersonlawfirm.com

*Attorneys for Plaintiff and the Class*

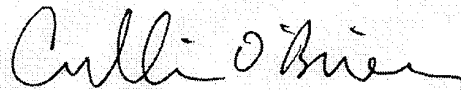
**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2011 a true and correct copy of the foregoing was served by first class mail to the following:

Robert L. Ciotti  
CARLTON FIELDS, P.A.  
4221 W. Boy Scout Boulevard, Suite 1000  
Tampa, Florida 33607-5780

Sylvia Rivera  
Morrison & Foerster LLP  
555 W. Fifth Street, Suite 3500  
Los Angeles, CA 90013-1024

*Attorneys for Defendant Colavita USA, L.L.C.*



---

CULLIN A. O'BRIEN  
Robbins Geller Rudman & Dowd LLP.  
E-mail: [cobrien@rgrdlaw.com](mailto:cobrien@rgrdlaw.com)

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



**ATTACHMENT A**

**I. DEFINITIONS**

1. “You” or “your” means Michael J. Sachs, Callahan & Blaine, and any assistant, employee, consultant, intern, law clerk, manager, partner, lawyer, associate, of counsel or any other agent or representative of Michael J. Sachs and Callahan & Blaine.

2. “Document” shall have the broadest meaning permitted under the Federal Rules of Civil Procedure, and includes, without limitation, any writing or tangible thing of any kind as well as any other means by which information is recorded or transmitted, including, but not limited to, audio or video tape recordings, electronic mail (“e-mail”), microfilms, photographs, charts, drawings, graphs, punch cards, computer programs, printouts, data processing records, work files, memoranda, notes, and the written information necessary to understand and use such material. The term “document” shall also include any data or information that is stored electronically or in a computer, whether or not reduced to printed form. A draft or non-identical copy of any document is a separate document within the meaning of this term.

3. “Employee” refers to any individual currently in the employ of, or at any time employed by, the relevant defendant or non-party.

4. “Representative” refers to any present or former director, officer, partner, agent, counsel, employee or other person acting or purporting to act on behalf of a corporation, professional corporation, firm, partnership, proprietorship, association, business entity or other person.

5. “Relating to” shall have the broadest possible meaning and includes, but is not limited to, relating to, referring to, connected with, commenting on, describing, evidencing, concerning, or constituting.

6. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope. The terms “and” and “or” shall be construed as and/or.

7. The terms “all,” “any” and “each” shall be construed as all and each and as necessary to make the requested inclusive rather than exclusive.

8. The singular of any term shall include the plural, and the plural shall include the singular.

9. The words “testing” and “analysis” shall be construed in the broadest sense and shall include all scientific or quasi-scientific studies, whether or not a manuscript was prepared, including, but not limited to, human studies, animal studies, pre-clinical and clinical studies, practice tests, research projects, and scientific manuscripts, whether published or unpublished.

10. “Results” shall be construed in the broadest sense and shall include any and all documents relating to the outcome of any and all tests or analysis referred to herein.

11. “Declaration” means the Declaration of Michael J. Sachs Requesting Dismissal of Class Action, filed in the Superior Court of California, County of Orange on December 8, 2010, in the action styled: *Martin, et al v. Carapelli USA, LLC, et al.*, No. 30-2010-00395464.

12. “Paragraph 2” of the Declaration refers to the following language:

Callahan & Blaine has had[sic] conducted exhaustive testing and analysis of the olive oil products of the Defendants in the instant action to confirm that they support the allegations made in the Complaint. Unfortunately, the results of the testing have been inconclusive and additional testing and analysis is necessary in order to determine whether this action should be maintained against the currently named Defendants.

## II. INSTRUCTIONS

1. The documents to be produced pursuant to these requests specifically embrace, in addition to documents within your possession, custody or control, documents within the possession, custody or control of any of your agents, accountants, representatives or attorneys. Such documents also embrace originals and identical copies (whether different from the original because of notes made thereon or otherwise) of the documents described in these requests.

2. In the event that any document called for by these requests has been destroyed or discarded, that document is to be identified by stating:

- (a) the nature of the document;
- (b) the names of any addressor or addressee;
- (c) if there are any indicated or blind copies;
- (d) the document's date, subject matter, number of pages, and attachments or appendices;

- (e) all persons to whom the document was distributed, shown or explained;
- (f) its date of destruction or discard, manner of destruction and/or discard;

and

- (g) the persons authorizing or carrying out such destruction or discard.

3. If any documents are within the scope of any request for production but are not being produced, or are being produced with portions redacted, pursuant to any claim of privilege or confidentiality:

- (a) state the nature of the privilege claimed (*i.e.*, attorney-client, work-product, etc.);



(b) state the name of the person or entity claiming privilege and the name of the attorney, if any, with respect to whom the privilege is claimed;

(c) state the facts upon which you rely as the basis for claiming any privilege as to the specific information or document; and

(d) state the name of such document; identify the type of document (*i.e.*, letter, memo, etc.); set forth the subject matter thereof; identify the person who prepared it and each person (if any) who signed it; identify each person to whom it was directed, circulated, or shown; and identify each person now in possession of the document. If any document is produced in redacted form, the word "redacted" is to be placed in the redacted section of the document.

4. All documents shall be produced that respond to any part, clause, or sentence of any paragraph of these requests.

5. Requests that are stated in the present tense include the past tense and those in the past tense include the present tense.

6. You shall produce all documents in a form which renders the document susceptible to copying either by photocopy or otherwise.

7. The following document requests are continuing in nature and in the event you become aware of or acquire additional information relating or referring thereto, such additional information is to be promptly produced.

### **III. DOCUMENT REQUESTS**

1. Any and all documents relating to the testing, and the results thereof, whether conclusive or inconclusive, of "the olive oil products of the Defendants" referred to in paragraph 2 of the Declaration.

2. Any and all documents relating to the analysis, and the results thereof, whether conclusive or inconclusive, of “the olive oil products of the Defendants” referred to in paragraph 2 of the Declaration.

3. Any and all documents upon which you based the following representation contained in paragraph 2 of the Declaration: “Callahan & Blaine has had[sic] conducted exhaustive testing and analysis of the olive oil products of the Defendants in the instant action to confirm that they support the allegations made in the Complaint.”

4. Any and all documents upon which you based the following representation contained in paragraph 2 of the Declaration: “Unfortunately, the results of the testing have been inconclusive and additional testing and analysis is necessary in order to determine whether this action should be maintained against the currently named Defendants.”

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 10-61793-CIV-LENARD

JOSEPH NACHIO, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

vs.

AMERICAN RICE INC., POMPEIAN INC.,  
and SALOV NORTH AMERICA  
CORPORATION,

Defendants.

---

**NOTICE OF RULE 45 SUBPOENA TO MICHAEL J. SACHS**

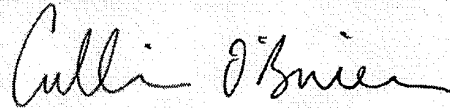
TO: ALL PARTIES AND THEIR ATTORNEY'S OF RECORD

Please take notice that, pursuant to Rule 34 and Rule 45 of the Federal Rules of Civil Procedure, Plaintiff will inspect and copy the documents identified in the Exhibit A, attached hereto, which are in the custody, possession or control of Michael J. Sachs at 9:30 a.m. on April 12, 2011 at the following location: Veritext Court Reporting, 550 S. Hope St., Suite 1775, Los Angeles, CA 90071.

You are invited to attend the production in accordance with the Federal Rules of Civil Procedure, or you may contact Plaintiff's counsel to obtain, at your expense, copies of the documents produced.

DATED: March 22, 2011

ROBBINS GELLER RUDMAN & DOWD LLP  
STUART A. DAVIDSON  
FLORIDA BAR NO. 084824  
CULLIN A. O'BRIEN  
FLORIDA BAR NO. 597341  
MARK J. DEARMAN  
FLORIDA BAR NO. 982407



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CULLIN A. O'BRIEN

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mdearman@rgrdlaw.com

The Gerson Law Firm  
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Plantation, FL 33317  
Telephone: 954/915-8888  
954/915-9191 (fax)  
sgerson@gersonlawfirm.com

*Attorneys for Plaintiff and the Class*



**CERTIFICATE OF SERVICE**

I hereby certify that on March 22, 2011 a true and correct copy of the foregoing was served

by first class mail to the following:

Robert L. Ciotti  
CARLTON FIELDS, P.A.  
4221 W. Boy Scout Boulevard, Suite 1000  
Tampa, Florida 33607-5780  
Telephone: 813/223-7000  
Facsimile: 813/229-4133  
rciotti@carltonfields.com

David F. McDowell  
Sylvia Rivera  
Purvi G. Patel  
MORRISON & FOERSTER LLP  
555 West Fifth Street, Suite 3500  
Los Angeles, California 90013-1024  
Telephone: 213/892-5200  
Facsimile: 213/892-5454  
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ppatel@mofo.com

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Amy Bloom  
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West Palm Beach, Florida 33401-6198  
Telephone: 561/650-7200  
Facsimile: 561/655-1509  
plovvry@ssd.com  
amy.bloom@ssd.com

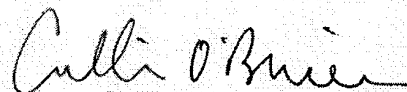
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Telephone: 213/892-9200  
Facsimile: 213/892-9494  
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*Attorneys for Salov North America Corp.*



CULLIN A. O'BRIEN  
Robbins Geller Rudman & Dowd LLP.  
E-mail: cobrien@rgrdlaw.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

Central District of California

JOSEPH NACHIO,

*Plaintiff*

v.

AMERICAN RICE INC., POMPEIAN INC., and  
SALOV NORTH AMERICA CORPORATION,*Defendant*

Civil Action No. 10-33154

(If the action is pending in another district, state where:  
Southern District of Florida )SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Michael J. Sachs, Esq., Callahan & Blaine  
3 Hutton Centre Dr., 9th Floor, Santa Ana, California 92707☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: See "Attachment"

Place: Veritext Court Reporting 550 S. Hope St., Suite 1775, Los Angeles, CA 90071	Date and Time: 04/12/2001 9:30 am
---	--------------------------------------

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*\_\_\_\_\_  
*Attorney's signature*The name, address, e-mail, and telephone number of the attorney representing (name of party) Joseph Nachio, who issues or requests this subpoena, are:Cullin A. O'Brien, Esq.  
Robbins Geller Rudman & Dowd LLP  
120 E. Palmetto Park Road, Suite 500, Boca Raton, FL 33432, Tel. 561/750-3000, cobrien@rgrdlaw.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 10-33154

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

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**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

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12. “Paragraph 2” of the Declaration refers to the following language:

Callahan & Blaine has had[sic] conducted exhaustive testing and analysis of the olive oil products of the Defendants in the instant action to confirm that they support the allegations made in the Complaint. Unfortunately, the results of the testing have been inconclusive and additional testing and analysis is necessary in order to determine whether this action should be maintained against the currently named Defendants.

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  - (d) the document's date, subject matter, number of pages, and attachments or appendices;
  - (e) all persons to whom the document was distributed, shown or explained;
  - (f) its date of destruction or discard, manner of destruction and/or discard;
- and
- (g) the persons authorizing or carrying out such destruction or discard.

3. If any documents are within the scope of any request for production but are not being produced, or are being produced with portions redacted, pursuant to any claim of privilege or confidentiality:

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(b) state the name of the person or entity claiming privilege and the name of the attorney, if any, with respect to whom the privilege is claimed;

(c) state the facts upon which you rely as the basis for claiming any privilege as to the specific information or document; and

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3. Any and all documents upon which you based the following representation contained in paragraph 2 of the Declaration: “Callahan & Blaine has had[sic] conducted exhaustive testing and analysis of the olive oil products of the Defendants in the instant action to confirm that they support the allegations made in the Complaint.”

4. Any and all documents upon which you based the following representation contained in paragraph 2 of the Declaration: “Unfortunately, the results of the testing have been inconclusive and additional testing and analysis is necessary in order to determine whether this action should be maintained against the currently named Defendants.”

# EXHIBIT G

CALLAHAN & BLAINE  
 A Professional Law Corporation  
 Daniel J. Callahan (Bar No. 91490)  
 daniel@callahan-law.com  
 Michael J. Sachs (Bar No. 134468)  
 michael@callahan-law.com  
 3 Hutton Centre Drive, Ninth Floor  
 Santa Ana, California 92707  
 (714) 241-4444  
 (714) 241-4445 Fax

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

BEVERLY MEYER,

Plaintiff,

v.

COLAVITA USA INC. and COLAVITA  
 USA, L.L.C.

Defendants.

Case No. 10-35097

**OBJECTIONS TO SUBPOENA TO  
 PRODUCE DOCUMENTS OF  
 MICHAEL J. SACHS**

Date: April 12, 2011  
 Time: 9:30 a.m.  
 Location: Veritex Court Reporting  
 550 S. Hope St.  
 Suite 1775  
 Los Angeles, CA 90071

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

COMES NOW Michael J. Sachs ("Responding Party") and objects to the  
 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of  
 Premises in a Civil Action as follows:

**GENERAL OBJECTIONS AND QUALIFICATIONS**

Responding Party specifically asserts the following objections to each of the  
 demands and the subpoena to testify:

1. Privacy: Responding Party objects to the demands and the subpoena to  
 testify to the extent they seek the disclosure of information regarding confidential

1 personnel files, confidential financial information or other information protected under  
 2 the right to privacy provided by Article I, Section 1 of the California Constitution, the  
 3 United States Constitution, statutory rights to privacy, and common-law privileges  
 4 pertaining to the disclosure of trade secrets, confidential information, tax returns,  
 5 schedules and related documentation.

6 2. Confidential Information: Responding Party generally objects to each and  
 7 every demand and the subpoena to testify insofar as they purport to require the deponent  
 8 to furnish information in his possession, if such would require the divulgence of  
 9 confidential information or communications that are proprietary to Responding Party.  
 10 Responding Party does not permit his information to be provided until such time, if  
 11 ever, as an appropriate protective order is in place or such production is compelled by  
 12 law, subject to a protective order requiring the execution of a secrecy agreement  
 13 affidavit prior to disclosure.

14 3. Burden and Oppression: Responding Party objects on the grounds that the  
 15 subpoena is burdensome, oppressive, overbroad and will cause a non-party unwarranted  
 16 annoyance and undue expense.

17  
 18 The foregoing General Objections and Qualifications apply to each and every  
 19 response to each demand herein, and are incorporated by reference to the extent  
 20 applicable in each of the specific responses set forth below as though fully set forth  
 21 therein. The failure to mention one of the foregoing objections in any of the specific  
 22 responses set forth below shall not be deemed a waiver of such objections.

### 23 24 OBJECTION TO SUBPOENA

25 Responding Party objects to the subpoena to the extent that it is an attempt to  
 26 obtain information for other disputes or for any issues unrelated to the instant action.



1        **OBJECTION TO REQUEST FOR PRODUCTION OF DOCUMENTS**

2        **REQUEST FOR PRODUCTION NO. 1:**

3            Any and all documents relating to the testing, and the results thereof, whether  
4        conclusive or inconclusive, of "the olive oil products of the Defendants" referred to in  
5        paragraph 2 of the Declaration.

6        **OBJECTION TO REQUEST FOR PRODUCTION NO. 1:**

7            Objection, this request is overbroad, burdensome, especially when taking into  
8        account the defined terms, and requires the Responding Party to speculate as to what  
9        documents are being sought. Additionally, the request seeks documents which are  
10       protected by the attorney-work product doctrine and attorney-client privilege. No  
11       documents will be produced.

12  
13       **REQUEST FOR PRODUCTION NO. 2:**

14           Any and all documents relating to the analysis, and the results thereof, whether  
15       conclusive or inconclusive, of "the olive oil products of the Defendants" referred to in  
16       paragraph 2 of the Declaration.

17       **OBJECTION TO REQUEST FOR PRODUCTION NO. 2:**

18           Objection, this request is overbroad, burdensome, especially when taking into  
19       account the defined terms, and requires the Responding Party to speculate as to what  
20       documents are being sought. Additionally, the request seeks documents which are  
21       protected by the attorney-work product doctrine and attorney-client privilege. No  
22       documents will be produced.

23  
24       **REQUEST FOR PRODUCTION NO. 3:**

25           Any and all documents upon which you based the following representation  
26       contained in paragraph 2 of the Declaration: "Callahan & Blaine has had [sic]  
27       conducted exhaustive testing and analysis of the olive oil products of the Defendants in  
28       the instant action to confirm that they support the allegations made in the Complaint."

**OBJECTION TO REQUEST FOR PRODUCTION NO. 3:**

Objection, this request is overbroad, burdensome, especially when taking into account the defined terms, and requires the Responding Party to speculate as to what documents are being sought. Additionally, the request seeks documents which are protected by the attorney-work product doctrine and attorney-client privilege. No documents will be produced.

**REQUEST FOR PRODUCTION NO. 4:**

Any and all documents upon which you based the following representation contained in paragraph 2 of the Declaration: "Unfortunately, the results of the testing have been inconclusive and additional testing and analysis is necessary in order to determine whether this action should be maintained against the currently named Defendants."

**OBJECTION TO REQUEST FOR PRODUCTION NO. 4:**

Objection, this request is overbroad, burdensome, especially when taking into account the defined terms, and requires the Responding Party to speculate as to what documents are being sought. Additionally, the request seeks documents which are protected by the attorney-work product doctrine and attorney-client privilege. No documents will be produced.

Dated: March 29, 2011

CALLAHAN & BLAINE, APLC

By:   
Michael J. Sachs

G:\Clients\3096\3096-02\Discovery\Objections to subpoena - Meyer v. Colavita.wpd

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3 Hutton Centre, Ninth Floor, Santa Ana, California 92707.

On **March 30, 2011**, I served the foregoing document(s) entitled:

**OBJECTIONS TO SUBPOENA TO PRODUCE DOCUMENTS  
OF MICHAEL J. SACHS**

on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Cullin A. O'Brien, Esq.  
ROBBINS GELLER RUDMAN & DOWD LLP  
120 E. Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
(561) 750-3000  
cobrien@rgrdlaw.com

☒ **(BY MAIL):** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.


☐ **BY FEDEX:** I deposited such envelope at Santa Ana, California for collection and delivery by Federal Express with delivery fees paid or provided for in accordance with ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing packages for overnight delivery by Federal Express. They are deposited with a facility regularly maintained by Federal Express for receipt on the same day in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I caused such document to be delivered by hand to the aforementioned addressee.

☐ **BY FACSIMILE:** I transmitted the foregoing document by facsimile to the party(s) identified above by using the facsimile number(s) indicated. Said transmission(s) were verified as complete and without error.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on **March 30, 2011**, at Santa Ana, California.

  
\_\_\_\_\_  
Jane Nichols

CALLAHAN & BLAINE  
 A Professional Law Corporation  
 Daniel J. Callahan (Bar No. 91490)  
 daniel@callahan-law.com  
 Michael J. Sachs (Bar No. 134468)  
 michael@callahan-law.com  
 3 Hutton Centre Drive, Ninth Floor  
 Santa Ana, California 92707  
 (714) 241-4444  
 (714) 241-4445 Fax

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

JOSEPH NACHIO

Plaintiff,

v.

AMERICAN RICE INC., POMPEIAN  
 INC., and SALOV NORTH AMERICA  
 CORPORATION,

Defendants.

Case No. 10-33154

**OBJECTIONS TO SUBPOENA TO  
 PRODUCE DOCUMENTS OF  
 MICHAEL J. SACHS**

Date: April 12, 2011  
 Time: 9:30 a.m.  
 Location: Veritex Court Reporting  
 550 S. Hope St.  
 Suite 1775  
 Los Angeles, CA 90071

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

COMES NOW Michael J. Sachs ("Responding Party") and objects to the  
 Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of  
 Premises in a Civil Action as follows:

**GENERAL OBJECTIONS AND QUALIFICATIONS**

Responding Party specifically asserts the following objections to each of the  
 demands and the subpoena to testify:

1. Privacy: Responding Party objects to the demands and the subpoena to  
 testify to the extent they seek the disclosure of information regarding confidential



1 personnel files, confidential financial information or other information protected under  
 2 the right to privacy provided by Article I, Section 1 of the California Constitution, the  
 3 United States Constitution, statutory rights to privacy, and common-law privileges  
 4 pertaining to the disclosure of trade secrets, confidential information, tax returns,  
 5 schedules and related documentation.

6 2. Confidential Information: Responding Party generally objects to each and  
 7 every demand and the subpoena to testify insofar as they purport to require the deponent  
 8 to furnish information in his possession, if such would require the divulgence of  
 9 confidential information or communications that are proprietary to Responding Party.  
 10 Responding Party does not permit his information to be provided until such time, if  
 11 ever, as an appropriate protective order is in place or such production is compelled by  
 12 law, subject to a protective order requiring the execution of a secrecy agreement  
 13 affidavit prior to disclosure.

14 3. Burden and Oppression: Responding Party objects on the grounds that the  
 15 subpoena is burdensome, oppressive, overbroad and will cause a non-party unwarranted  
 16 annoyance and undue expense.

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 18 The foregoing General Objections and Qualifications apply to each and every  
 19 response to each demand herein, and are incorporated by reference to the extent  
 20 applicable in each of the specific responses set forth below as though fully set forth  
 21 therein. The failure to mention one of the foregoing objections in any of the specific  
 22 responses set forth below shall not be deemed a waiver of such objections.

### 23 24 **OBJECTION TO SUBPOENA**

25 Responding Party objects to the subpoena to the extent that it is an attempt to  
 26 obtain information for other disputes or for any issues unrelated to the instant action.

1        **OBJECTION TO REQUEST FOR PRODUCTION OF DOCUMENTS**

2        **REQUEST FOR PRODUCTION NO. 1:**

3            Any and all documents relating to the testing, and the results thereof, whether  
4        conclusive or inconclusive, of "the olive oil products of the Defendants" referred to in  
5        paragraph 2 of the Declaration.

6        **OBJECTION TO REQUEST FOR PRODUCTION NO. 1:**

7            Objection, this request is overbroad, burdensome, especially when taking into  
8        account the defined terms, and requires the Responding Party to speculate as to what  
9        documents are being sought. Additionally, the request seeks documents which are  
10       protected by the attorney-work product doctrine and attorney-client privilege. No  
11       documents will be produced.

12  
13       **REQUEST FOR PRODUCTION NO. 2:**

14           Any and all documents relating to the analysis, and the results thereof, whether  
15        conclusive or inconclusive, of "the olive oil products of the Defendants" referred to in  
16        paragraph 2 of the Declaration.

17       **OBJECTION TO REQUEST FOR PRODUCTION NO. 2:**

18           Objection, this request is overbroad, burdensome, especially when taking into  
19        account the defined terms, and requires the Responding Party to speculate as to what  
20        documents are being sought. Additionally, the request seeks documents which are  
21        protected by the attorney-work product doctrine and attorney-client privilege. No  
22        documents will be produced.

23  
24       **REQUEST FOR PRODUCTION NO. 3:**

25           Any and all documents upon which you based the following representation  
26        contained in paragraph 2 of the Declaration: "Callahan & Blaine has had [sic]  
27        conducted exhaustive testing and analysis of the olive oil products of the Defendants in  
28        the instant action to confirm that they support the allegations made in the Complaint."

**OBJECTION TO REQUEST FOR PRODUCTION NO. 3:**

Objection, this request is overbroad, burdensome, especially when taking into account the defined terms, and requires the Responding Party to speculate as to what documents are being sought. Additionally, the request seeks documents which are protected by the attorney-work product doctrine and attorney-client privilege. No documents will be produced.

**REQUEST FOR PRODUCTION NO. 4:**


Any and all documents upon which you based the following representation contained in paragraph 2 of the Declaration: "Unfortunately, the results of the testing have been inconclusive and additional testing and analysis is necessary in order to determine whether this action should be maintained against the currently named Defendants."

**OBJECTION TO REQUEST FOR PRODUCTION NO. 4:**

Objection, this request is overbroad, burdensome, especially when taking into account the defined terms, and requires the Responding Party to speculate as to what documents are being sought. Additionally, the request seeks documents which are protected by the attorney-work product doctrine and attorney-client privilege. No documents will be produced.

Dated: March 29, 2011

CALLAHAN & BLAINE, APLC

By   
Michael J. Sachs

G:\Clients\3096\3096-02\Discovery\Objections to subpoena - Nachio v. American Rice.wpd

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 3 Hutton Centre, Ninth Floor, Santa Ana, California 92707.

On **March 30, 2011**, I served the foregoing document(s) entitled:

**OBJECTIONS TO SUBPOENA TO PRODUCE DOCUMENTS  
OF MICHAEL J. SACHS**

on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Cullin A. O'Brien, Esq.  
ROBBINS GELLER RUDMAN & DOWD LLP  
120 E. Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
(561) 750-3000  
cobrien@rgrdlaw.com

☒ **(BY MAIL):** I deposited such envelope in the mail at Santa Ana, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

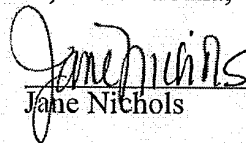
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☐ **BY PERSONAL SERVICE:** I caused such document to be delivered by hand to the aforementioned addressee.

☐ **BY FACSIMILE:** I transmitted the foregoing document by facsimile to the party(s) identified above by using the facsimile number(s) indicated. Said transmission(s) were verified as complete and without error.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on **March 30, 2011**, at Santa Ana, California.

  
Jane Nichols



# EXHIBIT H

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE  
CIVIL COMPLEX CENTER**

**MINUTE ORDER**

DATE: 11/03/2010 TIME: 08:30:00 AM DEPT: CX105

JUDICIAL OFFICER PRESIDING: Nancy Wieben Stock

CLERK: Larry S Brown

REPORTER/ERM: Carolyn Marie Gregor CSR# 2351

BAILIFF/COURT ATTENDANT: Chantel Cepeda

CASE NO: **30-2010-00395464-CU-FR-CXC** CASE INIT.DATE: 08/02/2010

CASE TITLE: **Martin vs. Carapelli USA, LLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Fraud

---

EVENT ID/DOCUMENT ID: 71046001

**EVENT TYPE:** Case Management Conference

---

**APPEARANCES**

Daniel J. Callahan, from Callahan & Blaine, present for Plaintiff(s).

---

Case Management Conference held.

Counsel states consumer class action is currently pending in U.S. District Court in Florida.

Plaintiff to file notice of any further related cases.

Counsel further states testing in Germany has been completed and testing in U.S. is ongoing.

Court orders amended complaint be filed and served no later than 12/31/10.

On Court's own motion, Case Management Conference is continued to 01/19/2011 at 08:30 AM in this department.

Court further orders case management conference statement be filed 5 days prior to 01/19/11; grants leave re: service of complaint.

Court orders plaintiff to give notice.

---

DATE: 11/03/2010

MINUTE ORDER

DEPT: CX105

Page 1  
Calendar No.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on May 6, 2011, declarant served the MOTION TO COMPEL by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on May 6, 2011, at San Diego, California.

  
SUSAN L. HAMILTON

OLIVE OIL - COLAVITA

Service List - 5/6/2011 (10-0161)

Page 1 of 1

**Counsel For Defendant(s)**

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Third-Party  
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714/241-4444  
714/241-4445 (fax)